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Abraham Thornton

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Abraham Thornton

Trial of

Abraham Thornton

EDITED BY

Sir John Hall, Bt.

ILLUSTRATED

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PREFACE.

THE trial of Abraham Thornton has every claim to a place among the *causes célèbres* of the nineteenth century. At the time it attracted universal attention, not only because of the human interest attaching to the story of poor Mary Ashford, but because of the elements of mystery which still surround the circumstances of her death. And the history of the affair does not end with the conclusion of the trial at Warwick. By a revival of an obsolete process of law the proceedings were reopened, and for the last time a man was called upon to plead to a charge of which, three months earlier, he had been pronounced "not guilty" by a jury of his countrymen.

My task as editor has been lightened by the assistance I have received in many quarters. Especially would I tender my thanks to Mr. Albert Mathews for his trouble in endeavouring to discover some trace of Abraham Thornton in America. If his efforts were unavailing it was because, with the imperfect data with which I supplied him, the problem was insoluble. In addition, I owe a deep debt of gratitude to Mr. Horace Bleackley and Mr. Eric Watson for their advice and information; to Mr. Alfred Sherwin for the loan of the original brief for the prosecution, which, containing as it did the depositions before the Coroner, has been of the greatest service to me; to Mr. William Finnemore, who on my behalf visited Mary Ashford's grave at Sutton Coldfield and procure for me a correct copy of the epitaph on her tombstone;

to Mr. Powell for his great courtesy when I visited the Birmingham Library; and lastly, to Mr. W. B. Bickley, who, besides placing his unrivalled knowledge of old Birmingham at my disposal, enabled me to obtain most of the letters and documents which appear in the Appendix.

J. H.

21 Dorset Square, N.W.1.

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INTRODUCTION.

About a mile north-east of the present Walmley Golf Links and some two miles east of Sutton Coldfield lies a district known as Langley Heath. It is a purely agricultural region and, in spite of its proximity to Birmingham, remains to-day very much as it was in 1817, when the events occurred which led to the trial of Abraham Thornton for the murder of Mary Ashford

Mary Ashford, the heroine of the tragedy, for her death was a tragedy however it came about, was a girl in a humble sphere of life. Her father was a gardener at Erdington and she herself lived at Langley Heath with her uncle, Mr Coleman, a small yeoman farmer, for whom she acted as housekeeper and general servant. When the story opens on Whit-Monday, 26th May, 1817, she was a strong active young woman about twenty years of age and from all accounts of decidedly attractive appearance. At that time bank holidays had not yet been instituted and work on Whit-Monday went on as usual, but in the evening there was to be a club dance which Mary proposed to attend. Before that, however, she had to go into Birmingham to make some purchases for her uncle and employer Accordingly, about eight o'clock in the morning, she set out on her seven-mile walk, dressed in her usual working clothes, a scarlet spencer, a coloured print frock, black woollen stockings, stout laced-up boots, and a close-fitting straw bonnet with yellow ribbons. But tied up in a bundle which she carried with her were the clothes which she meant to wear at the dance—a white spencer, a white muslin dress, a dimity petticoat, and a pair of white stockings. It was her intention to leave them with her friend, Hannah Cox, who lived with her mother, Mrs. Butler, at Erdington, which was still a mere country village midway between Birmingham and Langley Heath. Nothing happened to interfere with her plan. Having duly deposited her bundle at Mrs. Butler's,

Mary went into Birmingham, transacted her business, and by six in the evening was back once more at Erdington. Here she changed her clothes, putting on not only the white spencer, the white frock and the white stockings which were in her bundle, but, in addition, a pair of white shoes which Hannah Cox had, in the course of the day, bought for her at the village shop in Erdington. Thus attired she set out with her friend, about seven o'clock in the evening.

The dance was to take place at Tyburn, at *The Three Tuns*, a large roadside public-house adjoining the bridge which carries the Chester Road over the Birmingham and Fazeley canal It was kept by one Daniel Clarke and locally was never spoken of as *The Three Tuns*, but as The Tyburn House, Tyburn being the somewhat ominous name of the district. The dancing room was in a kind of annexe built out from the house itself and was apparently reserved exclusively for club meetings and festivities. Some twelve years ago, the old house was pulled down and the present red brick building was erected in its place The modern house, it is interesting to note, continues to be the head-quarters of the club, the reading room of which is in an outbuilding situated on the site of the old club room The distance from Erdington to Tyburn is about two miles, and the two girls therefore did not arrive until after half past seven, by which time dancing had already begun.

The company assembled consisted mainly of farm girls, labourers, and a sprinkling of farmers' sons One of the most prominent persons present seems to have been a young man, named Abraham Thornton, the son of a prosperous builder at Castle Bromwich. Very conflicting descriptions of him have been published. In some accounts he is spoken of as "of repulsive appearance," while in others he is referred to as a "well-looking young fellow." In truth, he seems to have been stout, heavy featured, and a rather clumsily built young man, about twenty-four years of age. It would appear that he was somewhat of a Don Juan, or, at least, that he wished to be regarded in that light. No sooner did he perceive Mary Ashford than he inquired who she was and, on being told that she was "Ashford's daughter," exclaimed something to this effect, "I have been

intimate with her sister three times and will with her or I'll die for it" Thornton always denied that he had said anything of the kind and the evidence that he did is by no means conclusive. The incident is chiefly important because, at a later date, the fact that he was supposed to have used these words greatly inflamed public feeling against him. Now, whether he did, or did not, indulge in the language imputed to him, he was certainly attracted by the girl and, in the course of the evening, was constantly in her company and danced with her frequently Mary was pleased and flattered. Her feelings, doubtless, resembled those of a young girl in a higher station of life who, at a hunt ball, finds herself the object of marked attention on the part of the master of the hounds or other local magnate

A hundred years ago an entertainment such as the dance at Tyburn involved, on the part of the men, the consumption of an enormous quantity of beer. For that reason, probably, the two girls decided that they should not stay late But, at eleven o'clock, when the prudent Hannah thought that it was time to go, Mary, who was enjoying herself, showed some reluctance to leave However, as she apparently expressed her willingness to come away very soon, Hannah, who in the course of the evening had scarcely spent a quarter of an hour in the dancing room, agreed to wait for her on the bridge outside. Here she was joined by a neighbour, Benjamin Carter, who had promised to see her home. After they had conversed together for about twenty minutes, Hannah begged the young man to return to the dancing room and endeavour to bring Mary away. Carter complied and soon came back with the news that Mary was dancing with Abraham Thornton, but would be with them very shortly. Nor did she break her word. Presently, both she and Thornton appeared and the whole party set out for Erdington along the Chester Road, Mary Ashford and Thornton leading the way, followed, at no great distance, by Carter and Hannah Cox. Carter, however, soon left them and went back to the dance, whereupon Hannah Cox overtook the other two and remained with them until they reached the by-road which branches off to Erdington

At this point they parted. Hannah returned home alone, while Mary, still escorted by Thornton, avowed her intention of spending the night at her grandfather's cottage and continued to follow the main road. It would seem that as soon as she emerged from the dancing room, Hannah had suggested that she should accompany her to Erdington.[1] Mary, however, declined the invitation, saying that "from her grandfather's house it would be nearer for her to go home in the morning" Now, this would be a perfectly satisfactory explanation of her conduct, were it not that she had left her working clothes at Erdington and must needs regain possession of them before she could return to Langley Heath. That being so, the question arises whether she had not determined, from the moment that she left the dance, to retain her freedom for the remainder of the night.

At twenty minutes to five, according to Mrs. Butler's clock—in reality at one minute to four, her clock, as it was afterwards ascertained, being forty-one minutes too fast—Hannah was aroused by Mary Ashford She was in a great hurry, she explained, and must have her working clothes at once, her uncle was going into Tamworth market early and she must reach home before he started. Hannah ran upstairs, while Mary, who remained in the kitchen, hastily divested herself of her dancing clothes and, as soon as Hannah returned with her bundle, attired herself in the red spencer, the coloured print dress and the black woollen stockings which she had worn the day before. She had, she said, spent the night at her grandfather's and, as regards Thornton, about whose proceedings Hannah seems to have displayed some curiosity, he had stayed with her "a good bit, but was now gone home" So pressed was she for time that, after changing her stockings, she resumed her white dancing shoes. Had she put on her walking boots, instead of carrying them away in the bundle containing her dancing clothes and certain small articles which she had bought in Birmingham, the difficulty of elucidating the mystery of her death would have been greatly lessened.

[1] Inquest. Deposition of Hannah Cox.

Mary's route lay along Bell Lane, at that time a solitary country road with only an occasional farm house or labourer's cottage upon it. To-day, it is known as Orphanage Road and is bordered upon both sides by suburban villas. In 1817 work in the fields began at an early hour and, on this particular morning, no less than three men observed Mary, who was an Erdington girl and therefore well known to them, hurrying northwards at a great pace. One of them afterwards deposed to being struck by the cheerfulness of her demeanour.[1] The last person to see her alive was a belated reveller returning from Tyburn, who, at about half-past four, according to his reckoning, noticed her walking very swiftly past the cross-roads formed by Bell Lane and the Chester Road. It should be mentioned that her grandfather's cottage, at which she had spent the night, if she spoke the truth to Hannah Cox, stood at the junction of these roads. It exists no longer, having been pulled down, presumably, when the modern villas on this portion of the Chester Road were built.

About a quarter of a mile north of the cross-roads, Bell Lane strikes into Penns Mill Lane, which runs eastwards past Mr. Webster's wire factory, at Penns Mill, to the village of Walmley. To-day it is named Penns Lane, the wire factory and the two or three labourers' cottages near it having disappeared completely. It now skirts the southern edge of Walmley golf links and, like Bell Lane, has lost its rustic character, villas having sprung up, or being in process of erection, all along it. At that time, however, any one desirous of gaining Langley Heath would not proceed to the end of Bell Lane, but would take a path across the fields and thus cut off a corner. The path in question started from Bell Lane, about two hundred yards north of the Chester Road, and, after running parallel with a "fore-drift," as a cart track is termed in Warwickshire, eventually led into Penns Mill Lane, about five hundred yards west of Mr. Webster's factory. Close to the gate into the lane and only a few feet from the footpath was a deep pit full

[1] Inquest. Deposition of Joseph Dawson.

of water which, on account of building developments, was filled in some few years ago.

Soon after six that morning, a man named George Jackson, employed upon the roads beyond Penns Mill, crossed the stile out of Bell Lane and followed the path which Mary Ashford had taken two hours earlier He came from Birmingham and was by trade a gun barrel borer, but in this, the second year after Waterloo, all branches of the armament business were so depressed that he was, doubtless, glad to secure work of any kind, even though it entailed, morning and evening, a five-mile tramp He had almost reached the gate leading into Penns Mill Lane, when he perceived, near the top of the sloping bank of the pit, a bundle, a woman's bonnet and a pair of white shoes. He stopped and, after peering anxiously into the dark waters of the pool, picked up one of the shoes and discovered stains of blood upon it Hastily replacing it, he turned and ran into the lane intending to raise the alarm at Penns Mill But he had not proceeded far before he met a man, named Lavell, whose cottage was close at hand Lavell, who worked for Mr Webster, agreed, on hearing Jackson's story, to return with him to the pit and watch over the bundle and other articles until further assistance could be obtained. On this occasion, Jackson, emboldened possibly by the presence of a companion, made some further investigations and found drops of blood about thirty yards from the pit and, close against the hedge bordering the lane, what he subsequently described as "a lake of blood." News such as he had to convey spreads quickly. Men from the factory, whose work began at half-past six, and labourers from the neighbouring fields hurried to the spot. Within a short space of time a dozen persons, at least, were assembled round the pit. Considering that he had now done all that was required of him, Jackson withdrew and proceeded stolidly to his work, without waiting to see whether anything further should be discovered.

Obviously, the first measure to be taken was to ascertain whether, as all suspected, the waters of the pit concealed a human body. A labourer, named William Simmons, was, accordingly, dispatched to procure some implement with

which a drag could be improvised. In due course, he returned with a rake to which some long reins were attached Twice it was cast into the water and twice pulled up without result. But, at the third attempt, the body of a woman was brought to the surface and drawn up upon the bank, where it was at once recognised as that of Mary Ashford By that time, Mr. Joseph Webster, the owner of Penns Mill, and an overseer of the poor of the Parish of Sutton Coldfield, arrived upon the scene and gave directions that the unfortunate girl's remains should be taken to Lavell's cottage.

Meanwhile, some important discoveries had been made. As soon as he was released from the task of watching over the articles left at the edge of the pit, Lavell went along the footpath and over the stile into the next "piece" He was accompanied by a man named Bird who, like himself, was a "wire drawer" at Mr. Webster's factory. Hitherto, Lavell had looked in vain for any traces of footsteps, either upon the grass of the field or upon the sloping sides of the pit itself. But the field which he and Bird now entered was under the plough, and upon its recently harrowed surface the footsteps of two persons, plainly those of a man and a woman, were clearly discernible. In the upper part of this field, that is on the side towards Penns Mill Lane, were two pits, one dry and the other full of water, about one hundred and forty yards distant from each other. It was mainly in the space between these two pits that the footsteps were to be seen. From the fact that in some cases the length of stride was greater than in others, the two men came to the conclusion that the parties had sometimes been running and sometimes walking. In certain places the footsteps crossed one another and generally followed so irregular a course as to suggest that one of the persons concerned, the woman presumably, was dodging and seeking to elude the man, who was pursuing her. In addition, there was a set of footsteps which presented a different appearance. The imprints were those of the same man running, but in this instance he was alone, there being no signs near them of the woman's shoes. This track started from the path close to the stile into the grass field, in which the fatal pit

was situated, and, after crossing nearly the whole of the harrowed field in a direction parallel to Penns Mill Lane, turned suddenly to the left, that is towards the Chester Road, and continued as far as a gate at the lower end of the enclosure. Here it stopped, it being impossible to make out any trace of footsteps on the grass beyond.

When they returned to the pit, after their investigations in the harrowed field, the poor girl's body had not yet been taken out of the water. While Bird went off to study the blood marks near the hedge, Lavell made a more minute examination of the ground in the immediate vicinity of the pit On this occasion, he observed at the top of the slope above the water a footstep which he had, seemingly, overlooked up to this moment It was, as he afterwards described it, the imprint of " a left foot turned sideways—having an appearance as though the weight of the body had been thrown on to the fore part of the foot." It was, he undoubtedly meant to convey, just such a footmark as a man would probably make, had he poised himself at the top of the slope, for the purpose of casting a heavy weight into the waters beneath him After warning the men standing round the pit to keep clear of this footmark, he rejoined Bird and devoted his attention to the blood stains near the hedge. Consequently, as soon as the girl's body was discovered and removed to his cottage, he and Bird were able to point out to Mr. Webster the result of their observations.

The largest quantity of blood, the " lake of blood " which Jackson had discovered, lay about forty yards from the pit under a tree in the hedge bordering Penns Mill Lane. The amount was afterwards more precisely described in Court by Mr. Webster as " about as much as I could cover with my extended hand." At the spot where it was found, the imprint of a human figure could be traced distinctly upon the dew-laden grass. To quote again the words of Mr. Webster, " It appeared that the arms and legs had been extended quite out. A small quantity of blood lay in the centre of the figure and a larger quantity at the feet. I perceived what appeared to be the marks of the toes of a man's large shoes at the bottom of the figure. The blood was much coagulated." From the tree a trail of blood ran

for about fourteen yards, in the direction of the pit, parallel to the footpath and about a foot from it. Yet, despite the fact that there was this continuous line of blood spots upon the grass, no human footstep had disturbed the dew which lay upon it so thickly. The deduction which was drawn from this circumstance will be pointed out in due course. For the moment, suffice it to say that Mr. Webster and all the other men round the pit were satisfied that the unfortunate girl had been outraged and thrown into the water. It was well known to many of them that she had been at Tyburn the night before—indeed, Lavell himself had danced with her.[1] Accordingly, Mr William Twamley of New Hall Mill, near Sutton Coldfield, who had been present when the body was taken out of the pit, rode off to Tyburn to inquire of Clarke, the landlord, whether he could say with whom the girl had left the dance. Immediate steps were also taken to inform Mr. Bedford,[2] a local magistrate, residing at Birches Green, near Erdington, that a murder had been committed.

Daniel Clarke, the landlord, was perfectly aware that Mary Ashford and Abraham Thornton had gone away from the dance together. As soon, therefore, as he heard of the fate which had overtaken her, he mounted his horse and rode off to find Thornton, who worked at his father's business at Castle Bromwich. He had not gone very far, however, before he met the man he was in quest of riding quietly and unconcernedly towards him. "What is become of the young woman that went away with you from my place last night?" inquired the publican, adding, when he found that Thornton showed some reluctance to reply, "she is murdered and thrown into a pit." "Murdered," exclaimed Thornton. "Yes, murdered," repeated Clarke. "Why," ejaculated Thornton, "I was with her until four this morning." He raised no objection to Clarke's suggestion that he should accompany him to Tyburn, for the purpose of "clearing himself." Three months later, when he was telling his story in Court, Clarke was asked what they talked about as they rode along together. "Just things we saw as we passed,"

[1] Inquest. Deposition of Hannah Cox.

[2] See note, p. 35.

was his answer. "What things?" inquired counsel. "Farming," he replied, "we did not allude to the murder at all"

About ten o'clock, after Thornton had been detained at the Tyburn House for half an hour, Thomas Dales, an assistant constable from Birmingham, arrived. He came in response to a request from Mr. Bedford that a police officer should be placed at his disposal, and his orders were to await that gentleman at Tyburn But on seeing Thornton and on hearing that he was under grave suspicion, he proceeded to interrogate him and finally took him into custody. In Court, when he was called upon to give an account of his examination of the accused, he professed to have only the haziest recollection of what had passed between them. But it will be necessary later on to advert to Dales' proceedings, and for the moment it will be more convenient to pass on to the next episode—the arrival of Mr. Bedford.

When he reached Tyburn, about eleven o'clock, Mr Bedford had already been engaged upon the case for the last two hours His first act, on learning what had occurred, was to visit the pit and go over the ground with Mr. Webster, Lavell and Bird, who showed him the blood marks in the grass field and the footprints in the harrowed field. Before this, Mr Webster had sent to Lavell's cottage for the white shoes found by the side of the pit and, having compared them with the woman's footsteps, found that they fitted them exactly. Mr. Bedford, for whose benefit the experiment was repeated, was equally satisfied upon that point. By this time, it had become necessary to take measures to protect the footprints from interference and he, consequently, gave directions that some of them at least should be covered over with boards. His orders were carried out, so far as a few of the footprints in the upper part of the field were concerned, but nothing unfortunately was done to preserve those leading up to the gate in the lower part of the field. Having concluded this business, Mr. Bedford did not proceed direct to Tyburn, but went round by Erdington, where he saw Hannah Cox and heard her account of the events of the night and early morning.

In 1817 it was not considered necessary to warn a

suspected person of the possible danger to himself of making any kind of statement Mr. Bedford, accordingly, when Thornton was brought before him, merely expressed a pious hope that he would be able to exculpate himself and forthwith began to question him, after which he took from him a statement Substantially Thornton's story was to this effect After Hannah Cox parted from them on the high road, about midnight, Mary Ashford and he walked on together until they came to a stile over which they climbed They wandered across some four or five fields and, eventually, came back to this same stile and sat upon it for about a quarter of an hour While they were there, a man came along who wished him "good morning" Soon afterwards, Mary and he set out for Erdington But he did not accompany her the whole way He knew, however, that she was going to Mrs Butler's, and he waited for her on the village green, until about four o'clock. As she did not appear, he started off for home, meeting various persons on the road, among others young Mr Holden and John Haydon, Mr. Rotton's gamekeeper, with whom he conversed for about a quarter of an hour It was about twenty minutes to five when he reached his father's house at Castle Bromwich At the dance "he drank a good deal, but not so much as to make him intoxicated."

As soon as Thornton had signed this statement, Mr. Bedford ordered Dales to take him upstairs and search him. He was assisted in the business by a man named William Bedson who, for the occasion, was sworn in as a special constable [1] There is no reason to suppose that he had any previous experience of, or special qualifications for, police work. He was simply a "wire drawer," who happened to be taking his morning draught at the Tyburn House, at the time when Clarke, the landlord, arrived, bringing Thornton with him. As soon as they were in a room apart, Dales, having invited Thornton to strip, perceived blood stains upon his shirt. Thornton, thereupon, admitted that "he had been concerned with the girl," but maintained that "it was with her consent and that he knew nothing of the mur-

[1] Inquest.

der." He told the same story, both to Mr. Bedford and to Mr. Webster, when they presently subjected him to a similar inspection. After Dales had taken charge of those articles of clothing upon which the incriminating stains had been found, Mr. Bedford instructed Bedson to remove the prisoner's shoes in order that they might forthwith be compared with the footprints in the harrowed field. This last task was confided to Lavell and Bird who, by this time, had found their way to Tyburn. Strange to say, neither Mr Bedford nor Mr. Webster considered it necessary to superintend their proceedings. They were content apparently to accept without question the report which these men rendered, on their return, that Thornton's shoes exactly corresponded with the man's footprints discovered that morning in the harrowed field. Now the conditions were such that it is almost impossible that they can have carried out the prescribed experiment with the accuracy which alone could give it any real value. The whole question, however, can be more appropriately dealt with when the evidence of Lavell and Bird has to be considered.

It was not until twelve hours had elapsed since she was taken out of the water, that the dead girl was seen by any member of the medical profession Shortly after seven that evening, Mr. Freer, a Birmingham surgeon, accompanied by Mr. Horton of Sutton Coldfield, arrived at Lavell's cottage. After a cursory examination of the body, they desired Mrs Lavell to remove it to a larger and a lighter room and to undress it. While their orders were being carried out, they went down to the pit and, guided by Lavell, inspected the blood stains under the hedge. On their return, they made a more exhaustive examination of the deceased and found two lacerations, due to a sexual connection, which had probably been effected by force and against her will [1] Having established that, they decided to defer making their *post mortem* examination until Thursday, 29th May. At the appointed time, two days later, when at last they opened the body, they discovered in the stomach about half a pint of fluid mixed with duck weed and concluded, accordingly,

[1] Inquest. Deposition of Mr. George Freer.

that drowning was the cause of death They could find no traces of food, from which they inferred that it was certainly six, perhaps twelve, and possibly, even, twenty-four hours, since she had partaken of any.[1] The deceased was, they were satisfied, a virgin until the intercourse took place which produced the lacerations At the time of her death, she was suffering from a natural condition which had, doubtless, come on unexpectedly, probably at the dance.

At the conclusion of his examination at Tyburn, Thornton was removed to the " dungeon " in High Street, Bordesley. The central lock-up in Peck Lane, Birmingham, officially known as the " dungeon," was pulled down in 1806, when the new prison in Moor Street was built But the dungeon at Bordesley, which was reserved for prisoners belonging to the parish of Aston still survived and was, according to modern ideas, fully as objectionable as the old place of confinement in Peck Lane It was a public-house carried on under the sign of *The Lamp*, its double character being proclaimed by a set of manacles over the front window. The portion used as a prison consisted, says Howard, who visited it, of " two damp dungeons down ten steps with two rooms over them " In his capacity of gaoler, Brownell, the landlord, received no salary, being, it was doubtless considered, amply remunerated by the opportunities afforded him of selling liquor to his prisoners. He appears to have had charge of the Aston lock-up for so long a period that it became commonly known as " Brownell's Hole."[2]

The inquest was opened on 30th May, at Penns Mill, by Mr. Hacket[3] of Moor Hall, a county magistrate, who as Warden of Sutton Coldfield was Coroner *ex officio*.[4] Thornton, whose solicitor was allowed to cross-examine witnesses, attended the proceedings which terminated, on the second day, in a verdict of " Wilful Murder " against him. He was, accordingly, committed, on the Coroner's Warrant,

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[1] Inquest. Deposition of Mr. George Freer.

[2] R. K. Dent, *The Making of Birmingham*, pp. 194 and 300. J. Howard, *State of Prisons in England and Wales Report on Aston Gaol.*

[3] Hacket, Francis Beynon (1784-1863), of Moor Hall and Moxhull.

[4] The office of Warden of Sutton Coldfield was abolished in 1886, and the election of Coroner of North Warwickshire was vested in the Warwickshire County Council.

for trial at the next assizes, pending which he was removed to Warwick and lodged in the county gaol.

Not for thirty-five years, since the trial of Capt. Donellan for the murder of his young brother-in-law, Sir Theodosius Boughton, had local interest been aroused to the same degree. As early as seven o'clock, on the morning of 8th August, 1817, the day fixed for Thornton's trial, the street in front of the County Hall at Warwick was thronged with people. At eight, as soon as Mr Justice Holroyd[1] had taken his seat upon the bench, the gates were opened and the rush to gain admittance was, says the *Times* report[2] "tremendous The Court, although ladies were necessarily excluded, being crowded to excess throughout the day" The prisoner, according to the same authority, was short of stature, about five feet seven inches in height and of so "stout a build" that his corpulence amounted almost to a deformity. His limbs seemed well proportioned, but his face which surmounted a short thick neck appeared "swollen and shining." "He was well dressed in a long black coat, yellow waistcoat, coloured breeches and stockings and remained unmoved during the whole of the trial" Mr. Clarke,[3] assisted by Mr. Serjeant Copley,[4] afterwards Lord Lyndhurst, and by Mr. Perkins, led for the Crown, while Thornton was defended by Mr. Reader[5] and Mr. Reynolds.[6] It must be remembered that in 1817 counsel for the prisoner were still precluded from addressing the jury and had to restrict their endeavours, on their client's behalf, to arguing points of law and to the examination and cross-examination of witnesses

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[1] Holroyd, Sir George Sowley (1758-1931), special pleader, 1779-87, appeared for Sir Francis Burdett against Speaker Abbot, 1811, and Judge of King's Bench, 1816-28.

[2] The *Times*, 11th August, 1817.

[3] Clarke, Nathaniel Gooding, K.C., d. 24th July, 1832, at an advanced age. Called to the bar, 1780; K C, 1808. For many years senior barrister on Midland Circuit.

[4] Copley, John Singleton, Baron Lyndhurst (1772-1863), Solicitor-General, 1819; knighted, Attorney-General, 1824; Master of the Rolls, 1826; and Lord Chancellor, 1827-30, 1833-35, and 1831-46.

[5] Reader, William (1759-1839), called to bar Middle Temple, 7th November, 1788.

[6] Reynolds, Henry Revell (1775-1853), called to bar at Lincoln's Inn, 19th May, 1798. Commissioner of Bankruptcy.

Introduction.

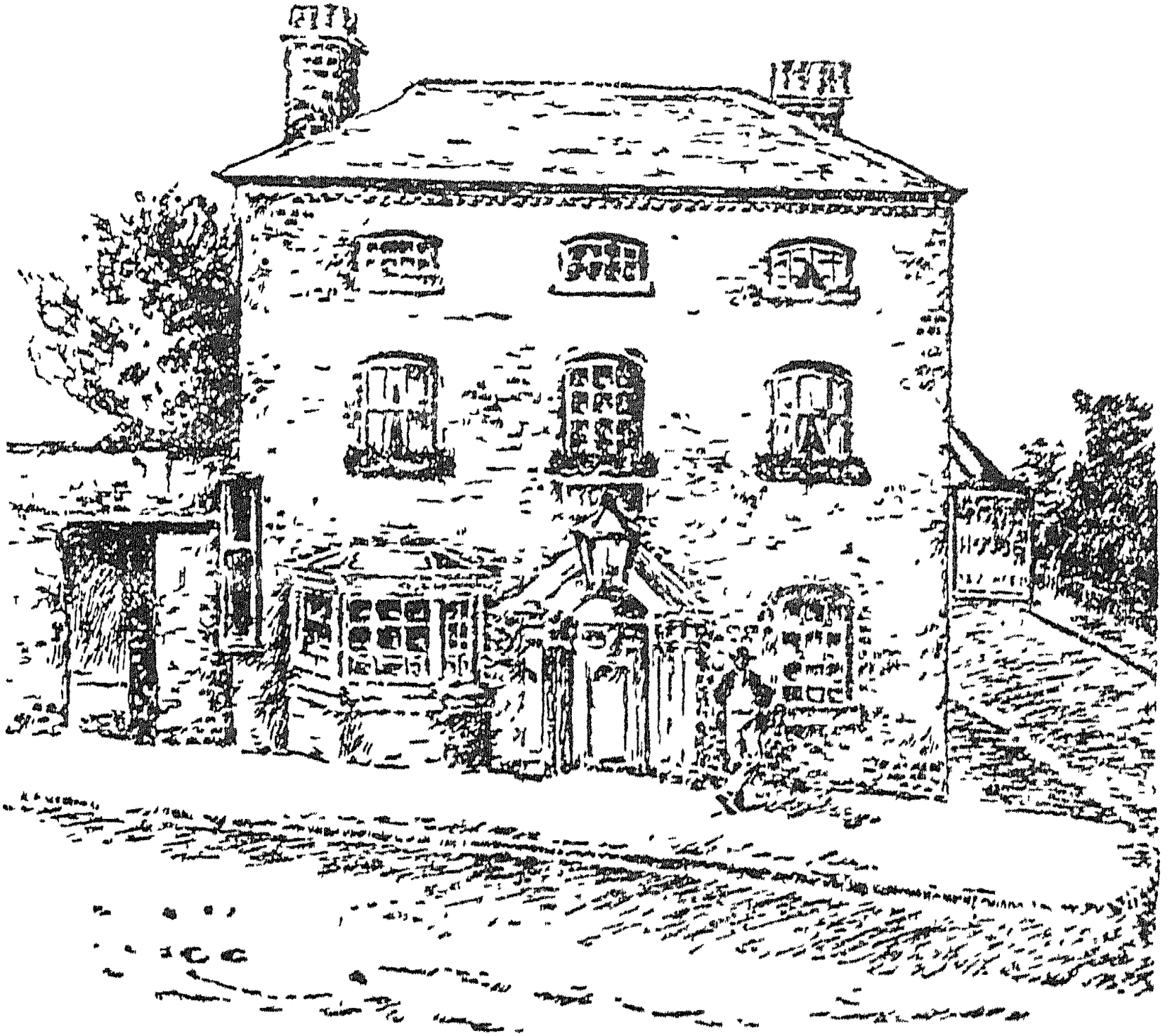
Directly the prisoner had pleaded "Not guilty" to the two counts in the indictment, the first of which charged him with the wilful murder of Mary Ashford, by throwing her into a pit of water, and the second with committing a rape upon her, Mr Clarke rose to address the jury After describing how the deceased attended the dance at Tyburn, he related how, on the morning of the following day, her dead body was found in the pit near Penns Mill The evidence which he proposed to call would show that the unfortunate girl had been outraged and cast into the water, and that the prisoner was the man who, in all human probability, committed the deed The condition of his clothes, when he was arrested, his own admissions and the fact that the very shoes taken from his feet fitted the footsteps in the harrowed field constituted a chain of circumstances which, counsel submitted, pointed almost irresistibly to his guilt.

Before passing to a consideration of the evidence, it may be well to amplify this brief summary of Mr Clarke's address by setting forth what is known as the theory of the prosecution It was to this effect The prisoner having failed to achieve his publicly proclaimed intention in regard to the deceased, while they were in the fields together, allowed her to leave him, soon after three o'clock, near the stile into Bell Lane He was well aware, however, that, after changing her clothes at Erdington, she would return to the same spot, in order to reach Langley Heath by the shortest route Accordingly, he lay in wait for her near the footpath across the harrowed field. On perceiving him she sought to elude him, but he caught her and having quieted her fears induced her to accompany him into the next field. Here he threw her down and effected his purpose. She was, without doubt, physically exhausted and, as the medical evidence showed, had not tasted food for many, perhaps even twenty-four, hours It is highly probable, therefore, that after a brief resistance, she fainted. But once the deed was committed the prisoner grew alarmed. The consequences would be serious, were he to be found with an unconscious girl, whom he had treated in this fashion. Hastily gathering her up in his arms, he carried her along the footpath and threw her into the pit. This and this only could explain why,

although the dew upon the grass was undisturbed by any footprints, there were nevertheless drops of blood upon it parallel with, and about a foot from, the path. After thus disposing of his victim, the prisoner ran into the harrowed field passing out of it, as his footprints proved, by the gate at the lower end Further than that it was impossible to trace him, but there could be little doubt that he made his way over hedges and ditches to the Chester Road On arriving there, he presumably took once more to the fields and thus gained the canal which he crossed by a bridge, about half-way between Tyburn House and Mr Holden's farm, this last place being about two miles from his home at Castle Bromwich. That the connection took place after the deceased changed into her working clothes at Mrs Butler's was scarcely open to doubt. If she gave herself to the prisoner before she went to Erdington, how came it that blood was discovered only on the grass by the pit, why was none found in the harrowed field or on any of the stiles which she must have crossed on her way to Mrs. Butler's? Moreover, would not her white spencer at least have shown signs of contact with the ground? It had, however, been examined and found to be perfectly clean.

Hannah Cox, the first witness, described how she went with the deceased to the dance at Tyburn and how she left her and the prisoner together on the turnpike road, at midnight Continuing her story, she related how the deceased aroused her at twenty minutes to five, according to her clock, but, as she was now aware, at one minute to four, according to Birmingham time, and having hastily divested herself of her dancing dress resumed her working clothes. When she opened the door to the deceased, she could perceive, the witness deposed, no signs of agitation or confusion about her. "Neither her person nor her dress appeared disordered" She seemed "very calm and in very good spirits." She did not see any stains upon the deceased's white dress. She did not, however, "take much notice of it." The deceased did not mention to her that she had "any complaint upon her." The deceased was probably in the house about ten minutes or a quarter of an hour.

John Hompidge, a "tin roller" living near Erdington,



Tyburn House

accompanied Reynolds' daughter home from the dance at Tyburn Reynolds' cottage was in Penns Mill Lane next to Lavell's and about two hundred yards from the fatal pit The witness was courting this young woman and remained with her for some time at her father's house While thus engaged, he heard the sound of two persons talking in the grass field in which the pit was situated About a quarter to three, when he started for home, he took the footpath from Penns Mill Lane into Bell Lane and, on reaching the "foredrift," saw ahead of him a man and a woman standing by the stile into the road He knew the prisoner and recognised him at once, but he could not distinguish the features of the woman, because she turned her face from him He wished the prisoner "good morning" and then went on his way, leaving him and the girl sitting together on the stile. Under cross-examination by Mr. Reynolds, the witness agreed that the woman at the stile "held her head down and appeared as though she would not be known" As will be shown in due course, the learned judge was, later on, at pains to impress upon the jury the great importance of this man's testimony.

Hompidge was the last man who saw the prisoner and the deceased together. The next witnesses could only speak of her movements after she had parted from him. Thus Thomas Asprey, a labourer, saw her, about half-past three o'clock, close to the horse pond in Bell Lane walking rapidly towards Erdington. She was quite alone. He could see no one else in the lane. Mrs. Butler's cottage was, he considered, about a quarter of a mile from the horse pond. John Kesterton, a carter, deposed that on the morning of 27th May he drove his master's wagon into Birmingham. As soon as he had watered his horses at the pond in Bell Lane, he turned them round and set out on his journey. After passing the widow Butler's cottage, he looked back and perceived the deceased leaving the house. He cracked his whip to attract her attention. She looked at him, but being, seemingly, in a great hurry started off, at once, in the direction of Bell Lane. It was then a quarter-past four. He could see along the road behind him for a considerable distance. Neither the prisoner nor any other person was

in sight. He knew the deceased well and could not be mistaken about her On this same morning, Joseph Dawson, a labourer, met the deceased in Bell Lane at the other end of Erdington village It was then about a quarter-past four They were well known to each other and she inquired of him "how he did" and he replied by asking the same question of her.[1] She had on a straw bonnet and a scarlet spencer, and carried a bundle, and was walking very fast. "There was no man about at that time as far as I could see" Thomas Broadhurst, the last of this group of witnesses, returned home from the Tyburn dance along the Chester Road and was close to the point at which Bell Lane intersects it, when he perceived the deceased, who was carrying a bundle, pass the cross-roads and walk swiftly up the lane in the direction of Penns Mill. According to his clock, which was a quarter of an hour too fast, it was twenty minutes to five when he reached home. It was seven minutes' walk, however, from his house to the cross-roads It would seem, therefore, that it was as near as possible half-past four when he caught sight of the deceased. It was fully a mile from Mrs. Butler's to the cross-roads.

The next set of witnesses told the story of the finding of the poor girl's body and described the significant discoveries in the harrowed field and in the immediate vicinity of the pit. George Jackson, the Birmingham man, related how, as he was following the footpath, he was horrified to see a bundle, a woman's straw bonnet and a blood-stained pair of white shoes on the sloping side of the pit, and how, in consequence, he hurried off to Penns Mill to obtain the assistance of some of Mr. Webster's people. In reply to Mr. Perkins, who cross-examined him, he stated that it was about half-past six when he reached the pit He described the sloping bank of the pit as "not very steep in a middling way," nevertheless, he finally agreed that it was "rather steep than otherwise" Labourers in the field were often about between four and five in the morning In his re-examination, he expressed the opinion that it was four yards from the top

[1] It was this witness who deposed at the inquest "that she appeared to be very cheerful."

of the slope to the edge of the water [1] In answer to Mr. Justice Holroyd, he said that the bundle and other articles were about a foot below the top of the slope.

The main facts to which William Lavell deposed—the footprints in the harrowed field and the experiments which he and Bird carried out with prisoner's and the deceased's shoes—have been described on a former page It will only be necessary, therefore, to consider certain answers in regard to them, which he returned to Mr Clarke, who examined him, and to Mr. Reader, who cross-examined him Having been interrogated by Mr Clarke about the footsteps leading towards the gate on the lower side of the harrowed field, which, in his opinion, were those of a man running, he replied that they pointed in the direction of the Chester Road It would be necessary, however, in order to reach it, and subsequently Castle Bromwich, "to go on trespass" The actual distance of thus taking a line across country would be somewhat less than by following "the regular way"—the road through Erdington. The prisoner's shoes were right and left shoes and all the man's footprints which Bird and he observed in the harrowed field, in the early morning, were made by right and left shoes. It should perhaps be pointed out that this circumstance was of some importance, inasmuch as it facilitated the task of distinguishing the imprints of the prisoner's shoes from those of a labourer's clogs or clumsy boots Assisted by Bird, continued the witness, he fitted the prisoner's shoes into the footmarks in the harrowed field. The experiment was, he supposed, "tried on about a dozen" of them. They fitted exactly He had no doubt whatever about that. He compared them with what he described as the "dodging" footsteps. They corresponded exactly. In short "they agreed in all parts." Some of the footprints had been covered over with boards and the prisoner's shoes fitted these with the utmost precision. On some of those which were thus protected the marks of certain nails on the soles of the prisoner's shoes were reproduced with great clearness. He made no attempt to fit the prisoner's left shoe into the

[1] At the inquest Mr. Webster gave the correct distance from the top of the slope to the water as seven and a half feet.

imprint of a "left foot turned sideways," which he had himself discovered at the top of the slope of the fatal pit. By Mr. Webster's directions, the witness compared the pair of white shoes found at the side of the pit with the imprints of a woman's foot in the harrowed field "Have you any doubt," inquired Mr. Clarke, "whether the woman's steps all along were made by the shoes you had?" "I have no doubt," was the reply.

Under cross-examination, the witness stated that it was about seven o'clock when Bird and he discovered the footprints, and it would be about one o'clock when they compared the prisoner's shoes with them. Mr. Reader then put it to him that, in the interval, there had been "a thunderstorm or a hard shower of rain" It had certainly rained, the witness admitted, while Bird and he were on their way from Tyburn to the harrowed field, but he was not prepared to say that it rained before that Only two of the man's footsteps and one of the woman's were covered over with boards These were in the upper part of the field near the dry pit When they fitted the prisoner's shoes into the footprints, the field had been trampled on in all directions by the numerous persons whom curiosity had brought to the spot The witness was not prepared to say that there were thousands of other footsteps, but there were, unquestionably, a good many He did not compare the shoes of any of the persons present with the footprints, which were supposed to be those of the prisoner. The imprints between the dry pit and the wet pit were those of two persons sometimes dodging, sometimes running and sometimes walking side by side. The two pits were about one hundred and forty yards from each other and about the same distance from the footpath. He observed no blood marks in the harrowed field In the grass field, from the tree by the hedge, where the large quantity of blood was found, there was a track of blood running for about fourteen yards parallel with the footpath in the direction of the fatal pit But no footsteps were discernible upon the grass in this field The only imprint of a foot in it was that of "the left foot turned sideways" at the top of the sloping bank of the pit. He did not compare the prisoner's shoe with it; indeed, he acknowledged that he could "not

tell whether it was a man's or a woman's " In re-examination, the witness expressed the opinion that a person " would not be long in making all the footmarks " in the harrowed field.

Joseph Bird, who succeeded Lavell in the witness-box, corroborated him in all essential points He also had no doubt whatever that the tracks of the man and the woman were those of the deceased and the prisoner. Under cross-examination by Mr Reynolds, he acknowledged that it had rained " sharpish," while he was returning from Tyburn to measure the footsteps, but he could not recollect that there had been as many as a hundred persons in the harrowed field, before they carried out their experiments—" there might have been thirty or forty." When re-examined by Serjeant Copley, the witness stated that the footsteps in the harrowed field were first discovered about seven o'clock, at which time there had not been many persons in the field.

The evidence of these men is of too great consequence to be passed over without comment of any kind Before discussing it, however, it is interesting to compare it with their depositions at the inquest.[1] Before the Coroner, when describing how he had fitted the prisoner's shoes into the man's footsteps, Lavell made the following admission:— " There had been a little rain which had mouldered part of the soil into the footmarks and the shoes seemed to fit exactly, tho' the marks were not quite so plain as they would have been if there had been no rain." On this same subject, Bird, also, spoke with less assurance at the inquest than he appears to have done at the trial. " Owing to its being rain," he deposed, " the soil had rather washed in the impressions made on the field, but two footsteps right and left had been covered over with a board." Under these conditions, it may fairly be asked whether any value can attach to the inferences drawn by these men. It is plain that, with the exception of three, the footprints remained for all practical purposes unprotected, for several hours, in a freshly harrowed field over which innumerable persons

[1] Counsel for the defence were not supposed to have copies of the depositions either before the Magistrates or the Coroner, and were not allowed to refer to them in cross-examination.

were allowed to wander Nor must it be forgotten that, while they were thus left at the mercy of any curious sight-seer, rain fell sharply for not less than a quarter of an hour. Lastly, Lavell's and Bird's manner of conducting their experiments (and this applies equally to the footsteps covered over with the boards) was highly unscientific. It is a well-recognised rule that the shoes or boots themselves must never be actually fitted into the imprints with which it is desired to compare them. The method now invariably prescribed is "to make the impressions for comparison side by side and at a sufficient distance from those in question"[1] Nevertheless, it is not suggested that these two witnesses were wholly mistaken. The general circumstances of the case render it exceedingly probable that the footsteps in the upper part of the field of a man and a woman, "sometimes running, sometimes dodging and sometimes walking side by side," were those of the prisoner and the deceased It is a different matter, however, in regard to the footsteps which, after pursuing a long and devious course, led eventually to the lower end of the field. These, it was suggested, were those of the prisoner in his flight. But it is only necessary to glance at the plan to see that no murderer hastening from the scene of his crime would be likely to follow so circuitous a path. In these circumstances, most people, before adopting so inherently improbable a theory, will require to be convinced by stronger evidence than that of clumsy experiments conducted under very adverse conditions. To blame these two men because in their inexperience they failed to carry out their task with the skill of trained police officers would be absurd. But at the same time, their conduct throughout does suggest strongly that they were so thoroughly imbued with the idea of the prisoner's guilt that they were readily disposed to ignore everything which seemed to conflict with their preconceived notions. Thus, they simply omitted to compare the prisoner's shoes with the solitary imprint of a left foot by the side of the pit. Yet, it is plain that they realised the importance of the question and, as reasonable men, must have understood that it was one

[1] Wills' *Circumstantial Evidence*, p. 177 and note (n).

which called for instant settlement. Can it be doubted that they refrained from making the experiment, because they anticipated that it would yield a negative result?

James Simmonds, a labourer, related how on the morning of the fatal day, assisted by a fellow-labourer, he contrived to recover the body from the water with a rake and some long rods. Mr. Joseph Webster, the owner of the factory at Penns Mill, testified to arriving at the pit about eight o'clock on Tuesday, 27th May, just as the unfortunate girl's body was brought in to the bank. Having given directions for its removal, he was shown the imprint of a human figure still plainly visible in the dew under the hedge. After describing the blood, the marks of the toes of a man's large shoes and other significant circumstances, he went on to say that he himself discovered signs close to a stile into the next field "as if one or more persons had sat down." It should be mentioned that at the inquest Mr. Webster was not content to speak vaguely of "one or more persons," but stated definitely that he had found "the marks of a man and a woman having sat upon the bank and leaned back." Continuing his story, the witness related that, about an hour later, he visited the harrowed field and superintended the comparison of the deceased's shoes with the woman's foot-prints "They exactly corresponded" "There was a spot of blood on the inside of one of the shoes and on the outside of the same shoe, on the inside of the foot, there was much blood." At this stage, the shoes were brought into Court and carefully examined by his lordship and the jury. It would seem that, by this time, the spots upon the leather were scarcely visible, but that those on the lining could be plainly distinguished From the witness's language on this occasion, he apparently meant it to be understood that the blood marks were on one shoe only. Be that as it may, at the inquest he certainly spoke of blood upon "the shoes," not upon one single shoe. On his way home, the witness went to Lavell's cottage and examined the body of the dead girl. Her red spencer had been removed and he "observed on each arm what appeared to be marks from the grasp of a man's hand." Later on, that morning, the witness tested Mrs. Butler's clock and ascertained that it was forty-one

minutes fast by his watch, which was, he informed Mr. Reader, timed by the Birmingham church clocks.

Fanny Lavell, the wife of the witness William Lavell, stated that, after it was taken out of the water, the body was committed into her charge. She undressed it and was obliged to tear off some of the clothes so thickly encrusted were they with blood. The shift was torn at the side and the frock was very dirty and much bloodstained. She could not detect any blood upon the woollen stockings Before the witness left the box, Dales, the constable, produced both the clothes of which she had been speaking and those contained in the bundle found at the edge of the pit. The pink frock, it was seen, had marks of dirt upon it and was stained with blood which, owing to the action of the water, had spread over the seat The deceased, it appeared, wore no flannel petticoat On the other hand, no trace of blood was to be seen upon the black woollen stockings When these different articles had been sufficiently examined by the jury, the clothes which she wore at the dance were exhibited. Her white spencer was clean, but both her white dress and her white dimity petticoat were stained with blood behind, and, unlike her black stockings, her white cotton stockings were discoloured as far as the ankles with large drops of blood. The importance of this last circumstance can hardly be exaggerated. It will not have been forgotten that the white shoes which she wore, both before and after she removed her white stockings, were stained with blood. Now, if her shoes were in that state how came it that the black stockings, which were taken from her legs after death, were entirely unstained and that despite the fact that the pink frock which she was wearing had blood upon it? The state of affairs revealed at the *post mortem* may be held to account for the condition of her frock. But that explanation is inapplicable to the stockings, seeing that, although both pairs were equally exposed to maculation, only the white pair were found to be stained. The circumstance is strange, but only one inference can be drawn from it. When the deceased put on her black stockings at Mrs. Butler's, the effusion of blood must have ceased which had stained her white stockings. And what can have caused such a tempor-

ary effusion but the lacerations produced by an act of connection, which had taken place before she returned to Erdington and resumed her working clothes?

Mary Smith, who assisted Mrs Lavell in looking after the dead girl on the morning of 27th May, deposed to arriving at her friend's cottage about half-past ten. By that time, the body was partially undressed and was, she maintained, still warm to the touch—an assertion which the learned judge appears to have allowed to pass without comment. This witness also professed to have seen marks on the deceased's arms which she ascribed to the "grasp of fingers."

The next subject to occupy the attention of the Court was the proceedings at Tyburn House on the morning of 27th May. Mr. William Bedford described how the prisoner was brought before him and how he made and signed a statement. After this document, the substance of which has already been given, had been read out by an officer of the Court, Thomas Dales, the constable, was called. In reply to Serjeant Copley, the witness stated that he was for about an hour at Tyburn House, before Mr. Bedford arrived, and during all that time he was in the company of the prisoner, the landlord and several other persons being also present. The witness conversed with the prisoner, but he could not recollect the particulars of anything that was said. He certainly told the accused to consider himself a prisoner, but, in spite of counsel's endeavours to prevail upon him to be more explicit, he could only repeat "I don't just remember, we were all talking together" Later on, by Mr. Bedford's orders, the witness took the prisoner upstairs and, having searched him, found his clothes in the condition which has been described. To the witness's inquiry as to whether he had any explanation to offer, the prisoner replied that he had been "concerned with the girl by her own consent and that he knew nothing of the murder." The witness was also present when Mr. Bedford inspected the prisoner. In his cross-examination, Mr. Reader elicited a reply to which the learned judge in his summing up invited the particular attention of the jury. It was before his clothes were examined that the prisoner acknowledged his relations with the deceased. The witness could not say that any one besides himself heard him make

this statement nor, to the best of his belief, did he repeat what the prisoner had said to Mr. Bedford. In his re-examination, the witness declared that he was not certain whether it was before or after Mr. Bedford's arrival at Tyburn that the prisoner first spoke about his connection with the deceased. He was quite clear that the prisoner made the admission when he was searched upstairs. Mr Sadler, his solicitor, and William Bedson were in the room on that occasion The witness knew nothing about Bedson and had never seen him before that morning.

After William Bedson, the special constable, had corroborated the last witness as to the condition in which they found the prisoner's clothes, Daniel Clarke, the landlord, related how on learning of the "misfortune that had happened to the deceased" he rode off at once to find the man in whose company he had last seen her. The story has already been told of how he met the prisoner riding unconcernedly towards him and how he told him that the girl with whom he had left the dance overnight "had been murdered and thrown into a pit" "I said to him," deposed the witness, "you must go along with me and clear yourself." "I can soon do that," was his confident reply. "Did he appear confused when you first informed him of the murder?" inquired Mr. Justice Holroyd. "I think," said the witness, "that he was a little confused when I first told him of it."

When Clarke left the witness-box, a short space of time was devoted to another matter John Cooke, a farmer, deposed to being at the dance at Tyburn and to hearing the prisoner speak about his former relations with the deceased's sister and avow his intentions in regard to the deceased herself. The remark, he explained, was not addressed to him but to a man named Cotterell The witness, however, overheard it distinctly. Under cross-examination, he said that, so far as he knew, no other person heard the prisoner's words. The witness did not caution the deceased to beware of the prisoner, although he knew her well and was a friend of her family. He did not offer to give evidence at the inquest. He was aware that Cotterell had denied to other people that the prisoner had talked in this strain. But in

answer to Mr Clarke, who re-examined him, the witness maintained that he had spoken of this conversation to Cotterell, who did not pretend that it had not taken place. Cotterell was not called and the incident was not inquired into further.

The main facts of Mr Freer's evidence have already been set forth. Under cross-examination, he stated that beyond the lacerations he could find no marks of violence about the deceased. There was nothing about them which was inconsistent with the prisoner's story that the deceased was a consenting party. The amount of blood from this cause was much greater than usual The deceased was a strong well-made girl about five feet four inches in height

This concluded the case for the prosecution and, as the prisoner elected not to address the jury, his counsel proceeded to call his witnesses With the single exception of William Coleman, the deceased's grandfather, who stated that the deceased had not been at his cottage on the night of the dance, all of them entered the box for the purpose of establishing the *alibi* upon which the defence was based William Jennings, a Birmingham milkman, deposed that he bought milk from Mr Holden and was in the habit of going to his farm every morning to fetch it A reference to the plan will show that Mr Holden's farm stood upon a by-road leading from Erdington and was close to a bridge over the canal, about fifteen hundred yards south of Tyburn. At half-past four on the morning of 27th May, the witness saw the prisoner coming from the direction of Erdington along the road past Mr. Holden's house He had no watch, but after seeing the prisoner, he milked a cow which would occupy him for about ten minutes and then inquired the time of Mr. Holden's servant. She looked at the clock and told him that it was seventeen minutes to five; it must therefore have been about half-past four when the prisoner passed down the road. Under cross-examination by Mr. Clarke, the witness admitted that he was not prepared to say positively whether the prisoner came from the direction of Erdington or whether he came along the towing-path. In his re-examination, he declared that he could see three or four hundred yards up the towing-path and if the prisoner

came that way he could hardly have failed to see him. Martha Jennings, the wife of the preceding witness, confirmed her husband's statement about the prisoner's leisurely proceedings. "He was coming gently along." She did not know the prisoner, but she now recognised him as the man she saw go down the road outside Mr. Holden's, on the morning in question In answer to Serjeant Copley, she acknowledged that she had been looking at a cow which was going along the lane and, having turned round, saw the prisoner close to her It was possible, therefore, that he might have come along the towing-path.

Jane Heaton, a servant in the employ of Mr. Holden, deposed that on Tuesday, 27th May, she rose about half-past four From her window she saw a man walking along the road leading from Erdington to Castle Bromwich To the best of her belief the prisoner at the bar was the man He was walking "quite slow" After she came downstairs, the Jennings asked her the time and she told them "it wanted seventeen minutes to five" It was about a quarter of an hour before that that she saw the man go down the road past her master's house. John Holden, junior, knew the prisoner by sight and on the morning of Tuesday, 27th May, met him about two hundred yards from his father's house. The prisoner was walking slowly towards Castle Bromwich. It was early, but he could not specify the time exactly. Mr William Twamley, of New Hall Mill, who claimed to be "the cause of the prisoner being taken up," stated that, on Tuesday, 27th May, he examined Mr. Holden's clock and found that it agreed exactly with his own watch which, as he at once took steps to prove, was "just right by St. Martin's Church, Birmingham, and wanted a minute and a half of the Tower Clock." John Haydon, a gamekeeper, was engaged in taking up his nets at some floodgates almost exactly a mile from Mr. Holden's Five minutes after hearing Mr. Rotton's stable clock strike five, he saw the prisoner coming towards him by the path through the meadows. He knew him well and inquired where he had been. "To take a wench home," replied the prisoner, after which they talked together for about ten minutes or so. John Woodcock, a miller, saw a man whom he took to be

the prisoner conversing with the last witness at about ten minutes past five He was well acquainted with the prisoner It should be mentioned that Mr. Webster had ascertained that the Castle Bromwich clocks, among which he included Mr Rotton's stable-clock, were a quarter of an hour too fast by Birmingham time which Mr Twamley and he wisely decided should be taken as the common standard It was, therefore, at five minutes to five, by the true time, that the witness observed the prisoner and John Haydon conversing. James White deposed to meeting the prisoner at a point about half a mile from the floodgates in the direction of his father's house at twenty minutes past five, according to Castle Bromwich time, or at five minutes past five, by the Birmingham clocks In order fully to appreciate the importance of this evidence, certain times and distances must be borne in mind. It was almost exactly one mile and a quarter from Mrs. Butler's, where the poor girl changed her dress and stockings, to the pit in which she was found drowned According to the evidence of Hannah Cox and the other witnesses for the Crown, fast as she may have walked, she can hardly have arrived at the fatal spot before twenty-five minutes past four It was two miles and a quarter from the pit across the Chester Road to the canal bridge and so on along the towing-path to Mr. Holden's—the route, the prosecution sought to show, which the prisoner took after the commission of the crime. But, if the witnesses for the defence spoke the truth, the prisoner reached the road past the farm at twenty minutes to five at the latest. Is it conceivable that, in the short space of one quarter of an hour, he can have waylaid his alleged victim, walked up and down the harrowed field with her, taken her over the stile into the grass field, outraged her, cast her into the pit and then made his way across country to the canal bridge and subsequently along the towing-path to Mr. Holden's farm, past which he is described as strolling in so leisurely a fashion?

At the conclusion of the case for the defence neither counsel for the Crown nor the prisoner himself delivered any address to the jury. The proceedings by that time had lasted for ten hours without intermission; nevertheless, after only a short pause, Mr. Justice Holroyd began to charge

the jury Sir George Holroyd, who is now recognised as one of the ablest judges of his day, had only recently been raised to the bench. In this, the first important trial over which he was called to preside, he is said to have spoken for two hours Unfortunately, the best reports which exist of his summing up are neither very accurate nor very skilfully condensed, while the others, it admits of no doubt, have been deliberately garbled Nevertheless, even though some of his most instructive comments upon the evidence may have been distorted or entirely suppressed, the main points to which he drew the attention of the jury are sufficiently apparent. It was a case, he told them, in which they must beware lest they allowed prejudice to interfere with their duty Without doubt, they were all of opinion that the prisoner's conduct was most reprehensible. That, however, was not the question which they had to consider. The only issues before them were these—Was this young woman murdered, and, if she was, did the prisoner commit the deed? After explaining the nature of circumstantial evidence, his lordship went on to say that much of the mystery surrounding the transactions which they had been investigating was now dispelled It was clear that the prisoner and the deceased were together, not only at the dance, but during the remaining hours of the night. The prisoner had never attempted to deny his relations with her, while maintaining that he had done nothing without her consent If that were untrue, if he did commit the act against her will, he would be guilty of rape and might in consequence desire to rid himself of her testimony Conversely, if she were a consenting party, there was no intelligible reason why he should murder her Whether the act took place before or after the deceased returned to Erdington was a question to which they must devote their most earnest attention. It had a very important bearing upon the probability of the prisoner's guilt.

His lordship proceeded then to discuss the evidence in detail. According to Hannah Cox, the deceased, when she changed her clothes, was calm and in good spirits and her dress showed no signs of disorder. It was the case, nevertheless, that the gown and the stockings which she took off

were stained with blood Hompidge's evidence was important as confirming the truth of the prisoner's account of his proceedings during the night and as establishing the fact that, before she returned to Erdington, the deceased and he were together in the fields in which the signs of their presence were discovered. After Hompidge left them seated on the stile together, no other witness was able to say that he had seen the prisoner in the deceased's company. It had been suggested, because of the absence of any footmarks upon the grass, that certain drops of blood between the hedge and the pit must have fallen from a body which was being carried along the footpath His lordship, however, was of opinion that no great importance should be attached to that, seeing that on no part of the grass field were any footsteps discernible Adverting to the prisoner's statement, it was a circumstance deserving consideration that he should have acknowledged his relations with the deceased, before he was called upon to admit them in order to explain the condition of his clothes. Again, when informed by Daniel Clarke that the girl had been murdered, he cried out at once, "I was with her until four in the morning" In neither instance was there the smallest attempt at concealment. Passing on to the evidence for the defence, the learned judge pointed out that it was quite possible for the prisoner to have reached Mr. Holden's farm by the towing-path. But, unless the witnesses were entirely mistaken about the hour at which they saw him, he could not in the time available have done all that the prosecution contended that he had done. According to the people at Mr. Holden's, he was neither heated nor had he the appearance of a man who had been running. Before arriving at a decision, concluded his lordship, they must carefully compare all the circumstances for, as well as those against, the prisoner, remembering always that it were better that a murderer should escape punishment than that an innocent man should suffer death.

The jury, after consulting together for about six minutes, returned, without retiring, a verdict of "Not Guilty." Thereupon, they were re-sworn and the prisoner was charged upon the second count in the indictment with rape. Serjeant Copley, however, informed the Court that the Crown did not

propose to offer any evidence His lordship, accordingly, directed the jury to acquit the prisoner, and the proceedings terminated

The result of the trial was received with great dissatisfaction not only in Warwickshire, but throughout the country. The attitude of the general public should in a measure be ascribed to the garbled and misleading reports of the trial which began to appear But locally Thornton's guilt was assumed from the moment of his arrest and, notwithstanding the many circumstances pointing to his complete innocence which had transpired in the course of the trial, few people were disposed to alter their original opinion That witnesses had been bribed and that the verdict had been obtained on perjured evidence was an almost universal conviction in the Sutton Coldfield district Dales, the constable, was not long in feeling the effect of the general displeasure. It was he who had sworn that Thornton had spontaneously acknowledged his relations with the dead girl, and Mr. Justice Holroyd, in consequence, had told the jury that this admission on the prisoner's part must be regarded as a strong point in his favour The trial took place on Friday, 8th August, and, immediately the verdict was returned, Mr. Bedford requested a full attendance of his brother magistrates for the following Monday at the police office in Birmingham. " After a minute investigation of the facts," he wrote some three months later, we came to the conclusion that Dales had been " guilty of gross misconduct " and adjudged him to be " dismissed from the police office with great disgrace."[1]

Dales, however, was but a minor culprit and the more important question now arose of whether further proceedings could not be instituted against Thornton himself. As the law stood in 1817, a man who had been acquitted by a jury of his countrymen might, in certain circumstances, be charged with the same offence a second time. The process known as an " appeal of murder " had not yet been expunged from the statute book. It had its origin " in the fact," says Sir James Stephen, " that the private vengeance of

[1] W. Bedford to Lord Sidmouth, 4th November, 1817.

Mary Ashford

the person wronged was the principal source to which men trusted for the administration of criminal justice, in early time "[1] In a case of homicide it was open to the heir-at-law of the victim to lodge an appeal of murder " within a year and a day of the completion of the felony by the death," and it was further enacted that " the plea of *autre fois acquit* on an indictment shall be no bar to the prosecuting of an appeal " Although, in 1817, appeals were generally regarded as obsolete, they had been resorted to, on several occasions, in comparatively recent times. Thus, when Spencer Cowper and his alleged accomplices were declared " Not Guilty " of the murder of Sarah Stout at Hertford, on 16th July, 1699, Henry Stout, the brother of the deceased, an infant ten years of age, acting through his mother, " sued out an appeal " against all four of the acquitted persons [2] The affair, however, never came to trial owing to the negligence of the Under-Sheriff for the County of Hertford who failed to execute the writ within the prescribed period of a year and a day from the commission of the supposed crime. A subsequent petition of Mrs. Stout that a new writ should be issued was rejected, after a debate before the Lord Keeper, the Master of the Rolls and two other judges in the Court of the King's Bench Again a few years later, in 1709, Christopher Slaughterford was acquitted of the murder of Anne Young at the Lent Assizes at Kingston in Surrey. Nevertheless, he was detained in custody, it being the opinion of the judge that he was guilty and that the case was one in which an appeal should be lodged. This course was, accordingly, taken by Henry Young, the brother and the heir-at-law of the deceased, with the result that Slaughterford was tried a second time at the bar of the Queen's Bench before Lord Chief Justice Holt and, being duly convicted, was hanged at Guildford on 9th July, 1907.[3]

Between 1709 and 1770 there were several cases of appeals of murder,[4] and in this last year a very curious instance

[1] Sir James Stephen, *History of the Criminal Law*, I., p. 245.

[2] *State Trials*, XIII., pp. 1189-1202.

[3] *State Trials*, XVIII., p. 326 (note).

[4] In 1729 James Cluff was hanged at Tyburn, having been previously acquitted on an indictment of murder.

occurred of a resort to this ancient process of law On Christmas Eve, 1769, two young Irishmen, Patrick and Matthew Kennedy, took part, near Westminster Bridge, in a drunken frolic in which the skull of a watchman, named Bigby, was fractured with a poker which one of the brothers was proved to have carried off from an adjacent public-house. Both of them were, in consequence, put upon their trial and convicted of murder on 23rd February, 1770, and both would assuredly have suffered death, but for the fortunate circumstance that their devoted sister, Kitty, was a fashionable courtesan She was at the time living under the protection of Lord Robert Spencer and insisted that her lover must induce his brother, the fourth Duke of Marlborough, to invoke the King's mercy. The Duke consented and did not plead in vain The two young men were reprieved from week to week and eventually, after they had been kept in suspense for more than a month, their death sentence was commuted into one of transportation for life At this stage, however, the friends of John Wilkes, "The Bill of Rights Society" as they were called, took up the matter and provided the widow Bigby with the funds necessary for "sueing out" a writ of appeal against the brothers "The mercy of a chaste and pious Prince," wrote *Junius*[1] in one of his famous letters, "has been extended cheerfully to a wilful murderer, because that murderer is the brother of a common prostitute" Once more the young men were in jeopardy of their lives An appeal of murder was in the nature of a civil action between individuals and was not a case, therefore, in which the Prerogative of Mercy could be exercised. Kitty, however, who could always command money, determined to buy off the appellant. Young Mr. St. John,[2] one of her most devoted admirers, undertook to approach the widow Bigby, and after considerable difficulty —for the Bill of Rights people urged her to stand fast— induced her to accept £350 not to appear Accordingly, on 6th November, 1770, when the two Kennedys were placed at

[1] Letter to *Public Advertiser*, 28th May, 1770.

[2] St. John, John (1746-1793), nephew of first Viscount Bolingbroke, barrister, Middle Temple, 1770.

the bar of the Court of the King's Bench and the name of the appellant was called, there was no response She was, in consequence, non-suited and the proceedings came to an end. The brothers, it would seem, were never actually transported, but were allowed to go abroad quietly, commissions in a foreign army having been procured for them by their sister's powerful friends.[1]

Before a week was over, Mr Bedford and his advisers were satisfied that it was only by an appeal of murder that further action could be taken. Meanwhile, the newspapers throughout the country, which with few exceptions were very hostile to Thornton, were publishing letters and making comments of a kind which would be regarded as intolerable in these days The loudest in demanding that the case must by some means or another be re-opened were the *Lichfield Mercury* and, in London, the *Independent Whig*, the not too reputable organ of Alderman Wood,[2] and the Westminster Radicals. Even the *Times*, on 25th August, announced joyfully that the affair had been taken up by some " independent gentlemen in the neighbourhood of Sutton Coldfield " and that there was a prospect that " the oppressive cloud on the unappeased sense of public justice " would before long be dispelled Mr. Bedford,[3] who was the leading spirit among the " independent gentlemen " alluded to by the *Times* was not a landowner, but a Birmingham solicitor He has been described as " a man of much tenacity of purpose and of sound common sense." That may be true of him as a

[1] Horace Bleakley, *Ladies Fair and Frail*, pp. 149-188.

[2] Wood, Sir Matthew (1768-1843), Lord Mayor, 1815-16 and 1816-17. Friend and counsellor of Queen Caroline; created a baronet by Queen Victoria, 1837, the first title she bestowed.

[3] Bedford, William (1755-1832). His family came from Droitwich. In 1784, when a "young Birmingham attorney," he married Miss Lydia Riland, daughter of the rector of Sutton Coldfield. His only son, born in 1794, took Holy Orders and became in his turn rector of Sutton. Mr. William Bedford's house and business premises in Birmingham were at the upper end of New Street, immediately opposite the place where the Society of Arts building now stands. About 1815 he went to live at Birches Green, near Erdington, and from there went to Batheaston, near Bath, where he died in 1832. (*Three Hundred Years of a Family Living The Rilands of Sutton Coldfield*, published in Birmingham in 1889.) A younger brother of Mr. Bedford married the heiress of a family named Yeend, and became possessed of the Abbey Estate at Pershore. Mr. John Yeend Bedford, the solicitor in the Thornton case, was his son.

general rule, but, in this affair, he seems to have displayed more of the first, than of the second, quality. For some years past, he had ceased to take an active part in the business of the firm which was carried on in New Street by his nephew, Mr. John Yeend Bedford. It was this gentleman, consequently, who was entrusted with the conduct of the business, once it was determined to incur the considerable expense of proceeding against Thornton The deceased's heir-at-law was her elder brother, William, a labourer employed on a farm at Hints, in Staffordshire. He was it appears an illiterate young man of poor physique and of a timid disposition. Nevertheless, when approached, he expressed his readiness to allow action to be taken in his name The next measure to be considered was the arrest of Thornton who, it was rumoured, contemplated leaving the country. From the Deputy-Clerk of Assize for the Midland Circuit it was ascertained that, after his acquittal at Warwick, he was discharged without restrictions of any kind In these circumstances, Mr. John Bedford desired his London agents, Messrs. Knight, Jones & Knight, of 2 St. James's Square, to lay the case before Mr. Francis Const,[1] a barrister and legal writer of high repute. The learned counsel was to be invited to specify the steps which should be taken to secure "the immediate apprehension of Thornton" and, at the same time, to express his opinion about "the probability or improbability of his conviction."

The ancient statute of Henry VII., wrote Mr. Const on 13th September, 1817, which prescribed that a person acquitted of murder was to be kept in confinement or held to bail, until the period should have elapsed in which an appeal could be lodged, was no longer observed. Mr. Justice Holroyd in discharging Thornton was only acting in accordance with the practice of other judges in recent times, and, having released him, he could not order him to be re-arrested. The appellant must obtain a writ of appeal in the proper quarter, before Thornton could be apprehended That that was a necessary preliminary admitted

[1] Const, Francis (1751-1839), legal writer, Chairman, Westminster Sessions. Left £150,000, amassed by skilful speculation and extreme prasimony.

of no doubt whatever He felt great diffidence, however, about expressing an opinion on the second point—the chances of securing a conviction, should another trial take place. The jury at Warwick had pronounced Thornton "Not Guilty," after only a few minutes' consultation, and he was disposed to regard it as very doubtful whether a second jury, after hearing the same evidence, would arrive at a different conclusion

In spite of the small encouragement to be derived from Mr. Const's opinion, Mr. Bedford determined to proceed. By the advice, apparently, of Mr. Clarke, K C , who paid him a visit at Birches Green, he resolved to send his nephew to London to consult with Mr. Chitty[1] and other eminent lawyers. Mr Chitty, whose written opinion Mr. John Bedford carried back with him to Birmingham on 23rd September, was more hopeful than Mr Const. It was a simple matter, he opined, to obtain a writ of appeal at the Cursitor's office at the Rolls in Chancery Lane Once procured, it must be dispatched to the Sheriff of Warwickshire who, on its reception, would issue a warrant for the arrest of Thornton. Before taking action, however, he would require security for the appearance of the appellant in Court and for the prosecution of his appeal Lastly, as regards the prospects of eventually bringing Thornton to trial a second time, that would, Mr. Chitty considered, largely "depend upon the representations of the judge who tried the cause, whether he was satisfied with the verdict. It would be very important if some of the magistrates and neighbouring gentlemen would concur in a written representation to the judge, stating their feelings as to the necessity of a re-investigation of the circumstances of the case."

Mr. Chitty's suggestion does not appear to have been even considered. Little difficulty would probably have been experienced in inducing some of the local magistrates and gentlemen to put forward a request for the revision of Thornton's case. But the Bedfords were, doubtless, aware that any measure of that kind would prove ineffectual,

[1] Chitty, Joseph, the elder (1776-1841), author of innumerable manuals and legal works. Trained in his pupil room in Pump Court some of the most eminent lawyers of the time.

inasmuch as Mr. Justice Holroyd was believed to concur with the verdict of the jury at Warwick Accordingly, after they had thoroughly discussed the other points dealt with by Mr. Chitty, they decided to instruct Messrs Jones & Knight to take the necessary steps for obtaining a writ of appeal. Meanwhile, they opened communications with the Under-Sheriff at Warwick with a view to ascertaining the nature of the recognisances into which the appellant must enter. These, it was arranged, were to take the form of a bond by which William Ashford himself and his uncles John Coleman of Langley Heath, Mary Ashford's employer, and Charles Coleman of Erdington, undertook to pay a hundred pounds to the Sheriff, should the above-mentioned William Ashford fail to appear to prosecute his suit against Abraham Thornton. By the time this matter was settled, Mr. John Bedford received the writ of appeal from his London agents and, on 8th October, personally delivered it and the obligation to prosecute to the Under-Sheriff at Warwick, who gave him in return a warrant for Thornton's arrest

Immediately on his return from Warwick, Mr. Bedford sent for John Hackney, a Birmingham Sheriff's officer, and, handing him the warrant, desired him to execute it without delay That same evening, 9th October, Hackney and two of his myrmidons proceeded to the house of Mr. Thornton, senior, at Castle Bromwich. Leaving his two men on guard outside, he rang the bell and was admitted by the maid-servant to the kitchen were the young man was sitting with his mother, his father, who died the following year, being ill in bed upstairs Having requested to speak with him in private, he "told him what he had got against him." Thornton merely asked him to read the warrant and, as soon as his request had been complied with, allowed himself to be handcuffed and led away without resistance. In the gig which Hackney had hired for the expedition, Thornton several times protested his innocence of the murder, but admitted that "if he had not gone with her it would not have happened," adding very unchivalrously that "she was as willing as he was." On arriving at Birmingham, he was kept for the night under a close guard in Hackney's house in Bell Street and was thus spared the ignominy of a second

confinement in "Brownell's Hole." The following morning, he was conveyed in a post chaise to Warwick "It was a pity," said Hackney as they drove along, "but you had gone off to America as soon as the trial was over," a tactful remark which elicited the reply that "if he had known as much as he did then (now) he would have gone."[1] In Warwick gaol he was not interned with the felons, but was given quarters on the debtors' side.

As the Courts were not sitting nothing further could be done for the moment Meanwhile, at the Bedfords' office in New Street, there was no lack of work. Witnesses had to be heard and new evidence had, if possible, to be obtained to upset the *alibi* which had saved Thornton at the last trial. The question of cost had also to be considered very seriously. It was already apparent that, although the fact that Thornton was again to be prosecuted was generally applauded, very few people had the slightest intention of bearing any share of the expenses Among Mr. Bedford's most zealous supporters were Sir Richard Phillips[2] and the Reverend Doctor Booker.[3] The first named was a London publisher and the proprietor of the *Monthly Magazine* who, in 1808, when Sheriff of the city of London had greatly surprised his Radical and Republican friends by accepting a Knighthood. Dr. Booker, the vicar of Dudley and Chaplain-in-Ordinary to H R H. the Prince Regent, had some literary pretensions, having written several religious works and some very inferior poetry. He was deeply interested in all the circumstances surrounding the death of Mary Ashford who, he was convinced, had been foully murdered. The case was the theme of many of his sermons and religious addresses. It was, he was never tired of pointing out, a lamentable example of the dangers besetting young girls, who went to places of amusement "unattended by a discreet male relative or a prudent matron friend." Later on, he embodied his views in a

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[1] Paper marked "Memorandum as to the taking of Thornton," 9th October, 1817.

[2] Phillips, Sir Richard (1767-1840), friend of Priestley and "Orator" Hunt, and patron of Bamford and other Radicals.

[3] Booker, Luke (1752-1835), poet and divine, rector of Tedstone-de-la-Mere, and vicar of Dudley

pamphlet,[1] in which he sought to demonstrate by a series o somewhat disingenuous arguments the certainty of Thornton's guilt. Both these gentlemen appear to have endeavoured to obtain pecuniary assistance for the appellant and, whether or not any success may have attended Sir Richard Phillips' efforts, Dr. Booker, from time to time, certainly did remit some small sums of money.

In the course of the fortnight following Thornton's arrest, much new evidence was forthcoming, but when sifted it proved to have little, if any, value. Witnesses related that they had heard that young Mr. Holden had privately admitted that he did not know Thornton by sight and was, consequently, very doubtful whether he was the man whom he saw near his father's farm on the morning of 27th May. On investigation, however, it turned out that Holden had been at school at Castle Bromwich and was quite familiar with Thornton's appearance. Several other persons declared that there were people ready to swear that they had seen Jennings in Birmingham at the very time when he professed to have been milking Mr. Holden's cows Mrs Jennings also was reported to have acknowledged that, far from strolling leisurely along, Thornton was walking at a great pace, when she saw him. Mr. Webster of Penns Mill, wrote to say that he had been given to understand that some of Mr. Rotton's servants were in a position to state positively that Haydon, the gamekeeper, could not have reached the spot at which he was supposed to have met Thornton, as early as he pretended. Mr. Webster's information, however, proved to be as incorrect as that of most of the other persons who sought to throw doubts upon the genuineness of Thornton's *alibi*. Strange rumours concerning Dales, the heretofore police officer, were also brought to Mr. Bedford's notice. The most sensational of these stories was to the effect that, while searching Thornton at Tyburn, he had found on him the very handkerchief with which the poor girl's screams had been stifled and had been bribed to say nothing about it. But a statement, made by Mrs. Lavell at the inquest, to

[1] The Rev. Luke Booker, LL D., *A Moral Review of the Conduct and Case of Mary Ashford.* Dudley and Birmingham, 1818.

which she still adhered, when examined by Mr. Bedford,[1] appealed yet more strongly to the popular imagination. When engaged in undressing the body, after its removal from the water, she professed to have noticed "towards the bottom of the hinder part of the gown the impression of something ribbed and she observed it more clearly when she held the gown up to the light." Clearly, the "something ribbed" was the imprint of man's breeches Now, it is possible to suggest an explanation of why this and other allegations of the same kind came to be made.

About a year earlier, in April, 1816, a very brutal murder was committed on a farm near the village of Over Whitacre, some twelve miles from Erdington, under conditions which superficially bore a great resemblance to those attending the death of Mary Ashford The body of a dairymaid was found in a pond and there were indications in the vicinity that a criminal assault had been made upon her, before she was thrown into the water. Suspicion fell upon a young shepherd, named Isaac Brindle, who was in due course convicted of the crime on circumstantial, but overwhelming, evidence.

The fact which told most heavily against him was the discovery, on the wet soil near the pond, of the impression of a man's knee encased in corduroy breeches and patched with stuff of the same material. The patch, however, was not sewn on straight and the ribs on it, in consequence, did not correspond with those on the other parts of the garment. When arrested, Brindle was found to be actually wearing breeches patched in this particular fashion. An *alibi*, which he tried to set up in his defence, broke down completely. The incidents of the trial[2] were discussed in every cottage and alehouse in Warwickshire and when, a year later, the death of Mary Ashford occurred, the testimony of deponents,

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[1] 24th October, 1817, when most of the witnesses for the prosecution at the former trial were examined.

[2] The *Birmingham Daily Mail* of 25th November, 1899, contains a reference to this case to the effect that "Mr. Baron Richards in passing sentence was so much affected that at the close he burst into tears, several legal gentlemen and numbers of persons in Court doing likewise." The murder seems to have been a singularly brutal one, and it is incomprehensible why the man's condemnation should have called up this display of emotion.

such as Mrs. Lavell, bore unmistakable traces of the impression left on their minds by the former case. And, while the question of Thornton's guilt or innocence was thus again at issue *The Mysterious Murder or What's the Clock, a melodrama in three acts founded on a tale too true* was produced and performed in Birmingham [1] The author was said to be no less a person than Dr. Booker. It seems, however, that the honour of writing it should belong to one, George Ludlam, at that time the prompter at the Theatre Royal, Birmingham [2]

The time was now approaching for the re-opening of the Courts and, on 28th October, Mr. Bedford despatched to his London agents the necessary affidavits for obtaining a writ of *habeas corpus* for the removal of Abraham Thornton to London This was duly procured and served on Mr. Tatnall, the keeper of Warwick gaol, who, on 5th November, 1817, himself brought his prisoner up to London and, on the following day, took him to Westminster Hall. The proceedings in the Court of the King's Bench began very quietly and seem to have excited little interest, probably because the public had not yet realised that Thornton was to appear in person. Mr. Clarke, K C , assisted by Mr. Gurney,[3] K.C , and Messrs. Richardson[4] and Chitty were for William Ashford, the appellant, and Mr. Reader and Mr. Reynolds for Abraham Thornton, the appellee. Directly Lord Ellenborough,[5] the Lord Chief Justice, Mr. Justice Bayley,[6] Mr. Justice Abbot[7] and Mr. Justice Holroyd had taken their seats upon the

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[1] So popular does it appear to have been that in 1819 it was revived under the title of *The Murdered Maid or the Clock Struck Four.*

[2] The play does not appear to have been acted at the Theatre Royal. Probably it was performed at fairs and halls of a popular character. It is not improbable that Dr. Booker had a hand in composing it, and that the rumour regarding the authorship was not entirely unfounded

[3] Gurney, Sir John (1768-1845), K.C , 1816.

[4] Richardson, Sir John (1771-1841), Judge of High Court, 1818; knighted, 1819.

[5] Law, Edward, first Baron Ellenborough (1750-1818), Lord Chief Justice, 1802, and raised to peerage.

[6] Bayley, Sir John (1753-1841), Judge of High Court, 1808; created baronet and privy councillor, 1834.

[7] Abbot, Charles, first Baron Tenterden (1762-1832), Judge of High Court, 1816; Lord Chief Justice, 1818; raised to peerage, 1827.

bench, Mr. Clarke moved that the various writs issued should be produced. Mr. Tatnall having handed in these documents, the appellant and the appellee were called by name and took their places upon the floor of the Court. After the formality of reading out the writs had been complied with, Mr. Clarke moved that the appellee should be committed to prison. "Let him be committed," ruled the Lord Chief Justice, whereupon Thornton was there and then transferred from the custody of Mr. Tatnall into that of Mr. Jones, the Marshal of the Marshalsea. He was then placed at the bar and William Ashford, the appellant, "a plain young countryman with sandy hair and blue eyes," dressed in black for the occasion, affixed his mark, for he could not write to the count of appeal Having declared, in answer to the Lord Chief Justice, who put the question to him directly, that he wished it read out, an officer of the Court proceeded to read what was in effect an indictment of Thornton, at the suit of William Ashford, "for that he did feloniously and of malice aforethought cast, throw and push Mary Ashford into a pit of water, situated in the Parish of Sutton Coldfield, wherein the said Mary Ashford was choked, suffocated and drowned and then and there did instantly die" To this count the appellee would have to plead, but, when Mr Clarke moved that he should be called upon to do so, Mr. Reader intervened He had only been instructed to appear the night before and was not yet prepared to advise his client how to act. Cases of this kind were very rare, and he would, therefore, crave the indulgence of the Court and ask that a future time might be appointed for receiving the plea After a short discussion, his request was granted, the proceedings being adjourned until the following Monday week, when the Marshal was directed to bring the appellee into Court.

Up to this point, Mr. Bedford, who had been formally appointed by the Court to act as the appellant's attorney, saw no cause for uneasiness But a few days later, in a letter to Mr Yates, his managing clerk, he sounded the first note of alarm. "It seems," he wrote on 11th November, "that the appellee has the option of waging battle and of challenging the appellant to single combat, which, if not

accepted by the appellant, the suit is lost . . It is rumoured here that that is the plea intended to be set up by the defendant and, unless we can devise any means by argument to induce the Court not to allow it, I am very apprehensive our poor little knight will never be able to contend the battle with his brutish opponent. Another consultation is, consequently, fixed for Thursday night, that authorities may be searched and the question duly considered before Monday "

The option which Mr. Bedford was so fearful that Thornton might be advised to exercise was his right to " wage battel " which had not been invoked since the reign of Charles I Nevertheless, it was admittedly a legitimate form of defence in appeals of murder. But the law, which permitted a suit to be determined by a resort to arms, provided for exceptional cases in which the defendant was deprived of this privilege Thus, certain persons were exempted from the necessity of accepting his challenge The peer of the realm, because in him the combat would be a degradation; the priest, because he could not comply without scandal to his sacred office; the citizen of London, because he has no education for fighting; the female, because nature has not given her sufficient strength; the infant, because of the weakness of immaturity; and the blind and the lame, because of their infirmities. Nor were these the only instances in which the defendant could be debarred from demanding that his accuser should enter the lists against him. Should they come to the conclusion that his guilt was a matter of violent presumption, the Court were bound to deny him the right of waging battle, it being unreasonable that an innocent man should stake his life against one who was already half convicted. But, should none of these objections hold good, a judicial combat must follow to be fought out in lists sixty feet square, after certain quaint formalities such as the taking of oaths against sorcery and witchcraft had been gone through. In the ensuing contest, were the appellee to be defeated, he was to be hanged on the spot. But should he kill the appellant, or be able to maintain the fight from sunrise until sunset, he was to be acquitted. More than this, should the appellant turn " craven " and give up the fight,

he was to be declared infamous and be deprived of the privileges of a freeman and, in that event, the appellee could recover damages and be for ever quit of all indictments for the offence of which he had been appealed.

Long before the proceedings began, on Monday, 17th November, 1817, a crowd collected round Westminster Hall and it was only with difficulty that the counsel engaged in the case could force their way into Court, where every foot of available space was quickly occupied Conspicuous among the spectators was Lord Yarmouth, afterwards the third Marquis of Hereford, the original of the Marquis of Steyne in Thackeray's famous novel It was rumoured that interesting developments were to take place, but it was the prospect of seeing Abraham Thornton which attracted the majority of those present. That he was guilty and owed his acquittal at Warwick to a lucky chance was an opinion which was not confined to ignorant sight-seers. Crabb Robinson,[1] who was in Court, after denouncing the monstrosity of the proceedings, records in his diary that " no one seemed to have any doubt of the prisoner's guilt, but he escaped owing to the unfitness of a profound real property lawyer to manage a criminal trial,"[2] a singularly unjust criticism of Mr. Justice Holroyd's conduct of the trial at Warwick. When the defendant appeared in charge of a tipstaff and was conducted up the centre of the hall, the crowd pressed in upon him so closely that his further progress was for a time completely checked. " In his new black coat, drab coloured breeches and gaiters he had the appearance of a respectable-looking farmer."[3] His demeanour was confident and he seemed quite undisturbed by the eagerness to catch a glimpse of him which was displayed around him.

When the Lord Chief Justice and his learned brethren had taken their seats, the appellee was placed at the bar between Mr. Reader and Mr. Reynolds. Mr. Le Blanc, clerk

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[1] Robinson, Henry Crabb (1775-1867), diarist; *Times* correspondent and foreign editor; barrister, Middle Temple, 1813; founder of Athenæum Club and University College, London.

[2] H. Crabb Robinson, *Diary Reminiscences and Correspondence*, II., pp. 68-70.

[3] *The Independent Whig*, 25th January, 1818.

in the Crown Office, thereupon read out the count which charged him with causing the death of Mary Ashford, and having concluded asked, "Are you guilty or not guilty of the said felony and murder whereof you stand so appealed?" Reading from a slip of paper which his counsel handed to him, Thornton replied, "Not Guilty, and I am ready to defend the same with my body," and, having uttered these words, he drew on his left hand one of a pair of gauntlets[1] or large gloves and threw the other upon the floor of the Court. Seeing that the appellant did not intend to take it up, Mr Reader moved that it should be kept in the custody of the officer of the Court. The Lord Chief Justice then asked whether the appellant were present and William Ashford stood up in front of his counsel. "What have you to say, Mr. Clarke?" inquired his lordship In a speech, which Crabb Robinson describes as "very weak," Mr. Clarke expresed his surprise that the charge should be met in such a manner. The ordeal of battle was an obsolete practice, and it seemed to him extraordinary that "in these enlightened days the person who has murdered the sister should be allowed to prove his innocence by seeking to murder the brother as well" "Nay," interjected the Lord Chief Justice, "it is the law of England, we must not call it murder." Mr. Clarke apologised and, continuing, pointed out that it was for the Court to determine whether this were a case in which battle should be waged Doubtless "they would look to the person of the appellant, and seeing that he is weak of body not allow the issue to be decided by a personal combat" The proper course for the appellant, interposed Mr. Reader, was to counter-plead and not waste the time of the Court with arguments about the policy or impolicy of suffering battle to be waged. With this the Court agreed, and Mr Clarke having signified his intention of counter pleading, the further proceedings were adjourned to enable him to prepare his plea. Before the Court rose, however, Mr. Reader begged to be allowed to offer a few words of explanation. Both his learned friend, Mr. Reynolds,

[1] The gauntlets were probably made for the occasion. They were merely a kind of bag of white sheepskin with no separate thumbs or fingers. They were attached by a string round the wrist.

and himself had thought it right to advise their client, the appellee, to enter the plea which had been recorded, rather than to allow him to put himself a second time upon his country. They had been moved to adopt that course, not because they felt any doubts about the justice of the verdict at Warwick, but because of "the extraordinary and unprecedented prejudice which had been disseminated against him throughout the country."

Ever since they realised that the defendant intended to invoke his right to wage battle, the appellant's legal advisers had been anxiously considering the framing of their counter-plea In these discussions it was always left to Mr Chitty to exercise the deciding voice by reason of his unrivalled knowledge of ancient judicial procedure. The counter-plea which he finally drew up was read out in Court at the sitting of 22nd November, 1817. It was a lengthy document setting forth the main points upon which the prosecution relied in the trial at Warwick, and to it was annexed the appellant's affidavit that the facts therein alleged were true, "as he verily believes" They raised, it was urged, a violent presumption of the defendant's guilt and it was, therefore, prayed that he should not be admitted to wage battle. The application, which was immediately made by the appellee's counsel for time to reply, was granted, and the further hearing of the case was adjourned until 24th January, 1818, the second day of the ensuing term.

Neither Mr. Reader nor Mr. Reynolds, apparently, felt competent to deal with a case of this kind and the assistance was, consequently, invoked of Mr. Tindal,[1] whose profound study of obsolete legal practices rendered him a worthy opponent of Mr. Chitty. Upon him consequently devolved the task of preparing and upholding in Court the appellee's reply to the counter-plea, his replication as it was termed. Meanwhile, the Bedfords were not without hope that a new witness had come to light who would be able to furnish important evidence against Thornton. Early in November, Mr. Bedford, the magistrate, was informed by the Home Office

[1] Tindal, Sir Nicholas Conyngham (1776-1846), counsel for Queen Caroline; M P., Wigton Burghs, 1824; Solicitor-General, 1826; knighted, Chief Justice Common Pleas, 1829.

that a prisoner on the hulk *Justitia*, at Woolwich, had made a communication respecting Abraham Thornton to Mr. Capper, the Inspector of Convict Hulks. The man referred to was a certain Omar Hall who having once been a Staffordshire banker had now fallen from his high estate and was actually under sentence of transportation for stealing fowls. It was apparently his first conviction, and the severity of the punishment suggests that the case must have been attended by some very aggravated circumstances. Even at that time, when criminals were simply regarded as pests who, if not exterminated altogether, must, at least, be prevented for long periods from injuring their fellow-men, transportation was an exceptionally heavy sentence for so comparatively trifling an offence. Be that as it may, the convict in June and July, 1817, shared a cell in Warwick gaol with Thornton, who was then awaiting his trial. According to his story, they rapidly became so friendly that Thornton not only talked to him with the greatest freedom about his case, but assured him that he did not fear the result because Dales, the constable, had been paid by his father to suppress the only piece of evidence which could convict him. Mr Bedford was greatly elated, and at once instructed his nephew to call at the Home Office and obtain leave to see and question Omar Hall. At the same time, when writing to thank Lord Sidmouth[1] for his courtesy, he took the opportunity of expressing the hope that, should the convict "prove instrumental in giving information to satisfy the object of public justice in bringing Thornton to trial," he would be granted a free pardon "to enable him to give his evidence." Mr John Bedford lost no time in complying with his uncle's instructions The result of his interview with Omar Hall was on the whole satisfactory. "I obtained from him," he wrote on 11th November,[2] "further material information. Nevertheless, before again communicating with Mr. Capper, who has promised to help in every way possible, I mean to investigate the possibility of his having made up his story, which the perusal of books and pamphlets might have enabled him to do."

[1] Addington, Henry, First Viscount Sidmouth (1757-1814), Home Secretary, 1812-1821.

[2] J. Bedford to Yates, 11th November, 1817.

Abraham Thornton

Apparently it was considered advisable to proceed with the matter for, on 29th November, 1817, a formal statement was taken from Omar Hall, on board the *Justitia* hulk. According to his account, Thornton, after they had been together in the same cell for about five days, told him about his relations with Mary Ashford. The details of what took place are related in the coarsest language; suffice it, therefore, to say that as a result of his assault upon her the girl became unconscious. Thornton's first impression was that she had fainted, that being a trick to which he knew from past experience that young women often resorted. But having dashed water on her face to no purpose, he discovered that she was dead. If he did not actually say that he there and then threw her into the pit, he certainly implied it very distinctly. In any case, he declared that the doctor perjured himself who swore at the inquest that she was drowned, for she was in a "dead state" before she was ever in the water. They often discussed the nature of the evidence which could be brought against him and Thornton always said that Dales, the constable, was "his friend" and had promised not to mention something which, if disclosed at the trial, would tell against him terribly. Dales, moreover, had undertaken not to produce a handkerchief which he had found upon him when he searched him. Thornton at this time was very anxious to transmit a letter to Dales which should not pass under the governor's eyes, and he begged the examinant to let him have a pen and ink. The examinant, as an educated man, was provided with writing materials, in order that he might write to the friends of illiterate prisoners. He was very loath, however, to betray the trust which the Governor reposed in him and it was only with great reluctance that he complied with Thornton's request. The letter was, he presumed, taken out of the gaol surreptitiously by a discharged prisoner. Dales came to see Thornton in prison on at least two different occasions. They always conversed together in a low voice. Nevertheless, the examinant overheard Dales say "I hope you won't forget your promise on your liberty." Later on, Thornton told him that his father had settled everything to Dales' satisfaction. The examinant was removed from Warwick Gaol on 22nd July.

Thornton promised to send him some money, but he had not kept his word.

Such was in substance the story which Omar Hall had to tell. It was to this extent confirmed that John Grant, the head turnkey at Warwick Gaol, made a statement to Mr. Bedford[1] that the convict did share a cell with Thornton and was his constant companion at exercise in the prison yard It was true, also, that Dales did visit Thornton while he was awaiting his trial As regards that, another witness, John Collingwood, a cabinetmaker's apprentice, who was at the inquest at Penns Mill, asserted that he had noticed Dales and his prisoner whispering together in a very suspicious manner.[2] Nevertheless, there can be little doubt that the Home Office authorities, anxious as they may have been to help Mr Bedford, attached no credence to Omar Hall's statement. As the law then stood, a convicted felon could not testify in a Court of Justice and, if he were required to give evidence, he must first be granted a free pardon. Prisoners, in consequence, often pretended that they could throw some light upon a crime which was under investigation, in the hope of receiving the pardon without which they could not be heard in Court The Home Office, it may be presumed, speedily came to the conclusion that Omar Hall's belated revelations were made with some such object as that In any case, nothing more seems to have been heard of the miscreant or of his story.

During all this time, Thornton was kept in confinement in the Marshalsea.[3] This ancient prison, for it dated from the reign of Edward III., abutted on the Borough High Street just south of St. George's Church. It was demolished some eighty years ago and not a trace of it now remains. In 1817, it was used chiefly as a debtor's prison, but Thornton seems to have been accommodated in a part of the gaol usually reserved for political offenders. Moreover, both in the matter of food and visitors he appears to have been treated with con-

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[1] Taken 14th January, 1818.

[2] Taken 22nd December, 1817.

[3] There is a description of the Marshalsea in Charles Dickens' *Little Dorrit*. See also E. Beresford Chancellor, *The London of Charles Dickens*, pp. 316-320.

sideration. When he had to appear in Court, he was always conveyed to Westminster Hall in a hackney coach for the hire of which and for the services of the tipstaff in attendance the appellant was charged a guinea on each occasion.[1] On account of the hostility of the mob and to avoid a repetition of the scenes of 17th November, he was invariably taken to a side-door and brought into Court by a passage under the House of Lords. At the resumed hearing on 24th January, 1818, it was evident that public interest in the case had in no way diminished. The same procedure was followed as at the former sitting. Abraham Thornton was called and having been placed at the bar his replication and the affidavit which was appended to it were read out by an officer of the Court. In support of his claim to wage battle the argument was as follows. From the moment that the deceased girl parted from her friend, Hannah Cox, at Erdington, she was never seen in the defendant's company. Yet the road was broad and straight and, had he been waiting for her, somebody must assuredly have seen him On the other hand, he was seen by several persons at various places sufficiently distant from the fatal pit as to make it impossible that he could have been near it at the time when the deceased reached it, on her way back to Langley Heath No single allegation in his signed statement had been disproved, and the jury at Warwick, after hearing all the evidence, had pronounced him "Not Guilty." All these circumstances, it was submitted, afforded a more violent presumption of innocence than those upon which the appellant relied in order to establish a presumption of guilt.

When the reading of the replication was concluded, Mr. Clarke at once prayed for time to reply, and that being accorded him the Court adjourned until 29th January, when the appellant's demurrer[2] was put in and Mr. Reader, on behalf of the appellee, announced his intention of joining issue. The 6th February, 1818, was accordingly appointed for the hearing of the arguments on both sides. Mr. Chitty's

[1] Account endorsed "Tipstaves, £8 8s."

[2] A plea in law that even if the opponent's facts are as he says, they yet do not support his case.

speech, on that occasion, was a most learned disquisition on the law of appeals of murder, in the course of which he invoked precedents drawn from Bracton,[1] Glanville,[2] *Fleta*[3] and every known authority on the subject. All the ancient writers, he maintained, were agreed that a strong presumption of guilt deprived the appellee of his right to "wage battel." In his counter-plea, his client had established a *prima facie* case of sufficient strength to go to a jury and, therefore, strong enough to deprive the appellee of his claim. At least, it established enough to excite suspicion "So suspicion was sufficient," remarked the Lord Chief Justice and, when Mr Chitty submitted that it was, he pointed out that "he had indeed fallen from his high estate" He had begun by premising that there must be a violent presumption of guilt and now he was content to talk about suspicion only "Strong pregnant suspicion and presumption of guilt were sufficient," replied Mr. Chitty, who went on to argue that the appellee's replication was not in order. The only answer he could return to the appellant's counter-plea was to contradict the facts which it set forth. No precedent could be found in any of the books for an introduction of fresh matter, by way of a counter-presumption of innocence. The appellee seemingly based his defence upon an *alibi* and the case, therefore, ought to go to trial If his *alibi* was as unassailable as his counsel submitted that it was, why should he shrink from facing a jury of his countrymen? As soon as Mr Chitty sat down, after speaking for four hours, Mr Tindal rose to reply The Court, however, were not disposed to listen to any more arguments that day, and the proceedings were adjourned until 8th February

The whole of the sitting of 8th February was devoted to Mr. Tindal's rejoinder. To "wage battel" was, he maintained, the undoubted right of the appellee. The counter-plea, he submitted, had failed to show that the case was one which fell within the exceptions which the law allowed Moreover, it was so vague that no direct answer could be returned

[1] Bracton, Henry de, Ecclesiastic and Judge, wrote between 1235 and 1259 *De egibus et consuetudinibus Angliæ.*

[2] Glanville, Ranulf de, Chief Justiciar of England, d. 1190.

[3] *Fleta*, name of a Latin textbook of English law believed to be composed by a judge whom Edward I. imprisoned about 1290.

to it It contained such statements as that there were marks upon the dead girl's arms "which manifestly appeared to divers persons to have been caused by the pressure of a person's hand" How could an issue be taken on such an allegation as that? And if the counter-plea were bad, the appellant had no case But should the Court hold a contrary opinion the replication was, he maintained, a sufficient reply. The appellee's movements on the fatal morning could be traced until twenty minutes past five, when he reached his father's house at Castle Bromwich. If the various times set forth in the replication were correct, it was utterly impossible that he could have committed the crime which was laid to his charge. In conclusion, therefore, he asked the Court not to be content with simply admitting the appellee's right of "waging battel" If they were satisfied of his innocence, it was always open to them to release him and allow him to depart without restrictions of any kind Bracton mentions a case in which the defence was based upon an *alibi* which appeared so conclusive to the presiding Judge that he simply dismissed the appeal and allowed the appellee "to go free without a day." This was a precedent which he hoped that the Court would follow on the present occasion Mr. Chitty having announced that he was not yet ready with his reply, the further hearing of the case was postponed until 16th April In the meantime, Mr. Reader applied that Thornton should be admitted to bail. No sureties, however, were in attendance and the Court rose without making the necessary order, and Thornton was once more carried off in custody to the Marshalsea.

On 16th April, 1818, when the further hearing of the suit of Ashford v. Thornton was resumed, Mr. Chitty made another and a last attempt to induce the Court to deprive the appellee of the right which, subject to certain exceptions, he now admitted that he possessed of "waging battel." The counter-plea, he once more maintained, established a *prima facie* case against the defendant and, therefore, precluded a "trial by battel." To set up an *alibi* was a proper form of defence before a jury, but before a jury only. In itself the allegation that the appellee could call competent witnesses to prove his *alibi*, showed that the case was not one in which "trial

by battel " should be sanctioned. All the authorities were at one in declaring that a " trial by battel " was a method of terminating a prosecution which should only be resorted to when there was an absence of evidence. The learned counsel then turned to the task of defeating Mr. Tindal's contention that, if the counter-plea were defective, or the replication sufficient, the appellee should be exempted from any form of trial and allowed to go free. For this purpose, he proceeded to read the counter-plea and to comment upon the facts which it recorded. The Bench, however, were not prepared to accept his inferences in silence. The averments, interposed Mr. Justice Bayley, were not sufficiently distinct. There was nothing to show that the appellee was ever in Mary Ashford's company after three o'clock on the fatal morning, and there was no evidence that his connection with her did not take place before she returned to change her clothes at Mrs Butler's. The footmarks, the drops of blood and the imprint of the human figure by the hedge, to which so much importance was attached, might all have been produced before she went back to Erdington, for anything that was proved to the contrary. The girl might have met her death in divers ways which were consistent with the defendant's innocence. Thus, she might have thrown herself into the water, or she might have gone to it to wash and have fallen in accidentally. When Mr. Chitty at last sat down, it was clear to every one in Court that his client had lost his case.

After consulting with his learned brethren for about a quarter of an hour, the Lord Chief Justice delivered judgment. As the law stood, the appellee was entitled to his " trial by battel," unless it should appear that he ought " to go free without a day," the appellant having declined this mode of trial. With this Mr. Justice Bayley and Mr. Justice Abbott concurred. Mr. Justice Holroyd was in full agreement with them and, in expressing his concurrence, drew attention to certain points which are all important in determining the question of Thornton's guilt or innocence. There was no single suspicious circumstance which might not have taken place before the defendant and Mary Ashford parted and before she went back to Mrs. Butler's. That they separated was

proved in evidence and, if everything alleged against him happened before their separation, what motive had he for falling upon her and slaying her on her way home? The Court rose on the Lord Chief Justice's intimation that final judgment would be delivered on 20th April

It was with the idea of bringing Thornton to trial, a second time, that the Bedfords had induced young Ashford "to appeal him" of murder. After their lordships' pronouncement they were fain to recognise that their object was unattainable and that their only course was to bring the affair to an end with as little delay as possible. Meanwhile, it was rumoured that the appellant had resolved to accept "battel" and there was intense curiosity to learn where and under what conditions the combat was to take place. The case, however, terminated in more prosaic fashion. On 20th April, 1818, as soon as the suit was called, Mr. Gurney, on behalf of the appellant, announced that in view of their lordships' judgment he had nothing further to pray. If that were so, rejoined Mr. Reader, the appellant must either accept "battel" or the appellee must go free The Lord Chief Justice acquiesced and directed that the appellant should be called. Mr. Gurney, however, declared that he did not propose to offer any objection to the defendant's discharge, provided it were understood that no action would, on that account, be taken against his client. There was no intention, Mr. Reader assured him, of praying anything against the appellant. The Court, thereupon, ruled that the defendant was free so far as the appellant was concerned, but, as they knew nothing of proceedings between private individuals, he must be arraigned at the suit of the Crown to which, however, he could plead *autre fois acquit*. Thornton was, accordingly, charged for the third time with the murder of Mary Ashford and for the third time pleaded "Not Guilty." His counsel then put in a copy of the record of his trial and acquittal at Warwick which the Attorney-General,[1] who had been summoned to attend, declared to be correct. After this formality, the Lord Chief Justice delivered the final judgment of the Court which was that "the defendant be discharged from this appeal and that

[1] Shepherd, Sir Samuel (1760-1840), Attorney-General, 1817.

he be allowed to go forth without bail." Thornton bowed to their lordships and retired from the bar. By Lord Ellenborough's directions, he left the Court by a private door behind the Bench and thus avoided the hostile reception which the angry mob, around the public entrance, were preparing to give him.

On this same day, 20th April, 1818, the Attorney-General gave notice in the House of Commons that he would shortly move for leave to bring in a bill to abolish trials by "battel" and appeals of murder. The bill was duly introduced and the following year received the Royal assent and passed into law. It is worthy of notice that when it was sent up to the House of Lords, Lord Eldon,[1] the most conservative of Chancellors, in moving its second reading, declared that "It was a great absurdity that a man who had been acquitted by the unanimous opinion of a jury should again be put in jeopardy of his life, provided any person, standing in a certain degree of relationship to the deceased, thought proper to proceed against him by civil suit. . . . It was, indeed, surprising that such a law should have continued a part of our system which, in other respects, came so near to perfection."[2]

After the dismissal of the appeal against him, little is known of Abraham Thornton. In the first instance, he appears to have returned to Castle Bromwich, where he found life unbearable owing to the execration with which he was regarded. In the circumstances, he seems to have resolved to carry out the plan of emigrating which he had been considering at the time of his second arrest. According to *Aris's Gazette*,[3] he secured a berth at Liverpool, early in September, 1818, on board the *Independence* bound for New York. But the other passengers, on discovering who he was, "unanimously refused to go in the same vessel with him" and insisted on his being put ashore. In its next issue, however, the *Gazette*[4] professed to be in a position to inform its readers that he had

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[1] Scott, John, first Earl of Eldon (1751-1838); Attorney-General, 1793; created Baron Eldon, 1799; and Lord Chancellor, 1801-6, 1807-27.

[2] Campbell, *Lives of the Chancellors*, pp. 342-343.

[3] *Aris's Birmingham Gazette*, 26th October, 1818.

[4] *Aris's Birmingham Gazette*, 2nd November, 1818.

contrived to secure a passage on the *Shamrock* in which he sailed from Liverpool, on 30th September, 1818. In America, he seems to have fallen into complete obscurity, but it is believed that his subsequent career was fairly prosperous, that he married and that he died at Baltimore, in 1860 His opponent, William Ashford, "the poor little knight" of 1817, followed, in his later years, the trade of a fish hawker and died in Birmingham, in 1867.

Abraham Thornton, the rustic Don Juan, is a singularly unattractive figure. But there cannot be a shadow of doubt that he was innocent of the crime of which he was accused. His *alibi* was unassailable, none of the witnesses upon whose testimony it was established being in the slightest degree shaken under cross-examination. Moreover, it possessed the merit that it was not brought forward as a last resort, long after the charge was made, but was set up at once in the statement which he made before Mr. Bedford, when he was first arrested. And the different facts which were supposed to point unmistakably to his guilt are all capable of a satisfactory explanation. The footsteps and the imprint of the human figure only incriminate him if they were produced after Mary Ashford's visit to Erdington. Conversely, if they were merely the traces of incidents which took place before she went to Mrs. Butler's, they are the strongest possible indications of his innocence And the weight of evidence favours the supposition that they related to events which occurred during the hours of the night. Both she and Thornton were seen by the witness, Hompidge, seated upon a stile, at three o'clock in the morning, within a few hundred yards of the harrowed field in which their footprints were subsequently discovered. Furthermore, the white stockings which she took off at Erdington were plentifully stained with blood, while those, which she was wearing at the time of her death, had not a spot upon them. Nor must it be forgotten that after she changed her clothes at Mrs. Butler's, she was never seen in Thornton's company. From these different circumstances may it not be inferred that Mary Ashford did yield to her lover's solicitations, before she went to Erdington, and that being so is it believable that he can, two or three hours later, have attacked her on her way home and thrown her into the pit?

Abraham Thornton.

It is a first principle of jurisprudence that no man should be charged with the commission of a crime, unless it has been established, beyond all reasonable doubt, that a crime has actually been committed. In Thornton's case, however, the *corpus delicti* was assumed, it was certainly never proved. Mr. Bedford, Mr. Webster and all those who took part in the early investigations jumped at once to the conclusion that Mary Ashford was the victim of a crime, similar to that which Isaac Brindle, the shepherd at Over Whitacre, had committed, a year before And taking into consideration the first circumstances which came to their notice, it was not an unreasonable supposition. They were inexperienced men who, without the assistance of trained police officers, were suddenly called upon to deal with a difficult case and, on the whole, they performed their task with intelligence. The action of Mr. Webster and Mr Twamley in testing the village clocks and in reducing the time to a common standard not improbably saved Thornton's life. Unfortunately, they were so certain that it was a case of murder that they never asked themselves whether the girl's death could be ascribed to some other and more innocent cause Had they reconsidered the matter in an impartial spirit, they could scarcely have failed to realise that there were circumstances which, if they did not absolutely preclude the possibility, at least, made it very improbable, that a murder had been committed The crime, if crime there was, must have taken place in broad daylight, close to a carriage road and a much-frequented footpath and within a short distance of two workmen's cottages. Yet neither screams nor cries for help were heard. Mary Ashford was a strong and active young woman and capable, therefore, of offering a most strenuous resistance to an aggressor. Nevertheless, the doctors who examined her after death could find upon her neither bruises nor abrasions of the skin nor other signs of a struggle. Very different in that respect was the appearance of Isaac Brindle's victim. More destructive still of the theory of murder was the fact that the deceased's bonnet, bundle, and shoes had been placed in a conspicuous position on the sloping side of the pit, where they must inevitably attract the notice of the first person who passed that way. Is it conceivable that a murderer would act in that fashion? Would he not,

on the contrary, before taking to flight, thrust them into the nearest ditch in the hope of retarding the discovery of his crime for as long as possible?

It now only remains to suggest how the tragic event may have occurred. Murder being ruled out, there are only two alternatives to be considered. The poor girl must either have thrown herself into the water deliberately or have fallen in accidentally. In his interesting account of the case, Mr. Thornbury [1] adopts the theory of suicide. On her way home, she was, he thinks, overcome by a "dread of consequences, of shame and of discovery" and "took a desperate plunge into death." Now, it was surely too early for a fear of consequences to have overwhelmed her. Moreover, the evidence goes to show that, on the fatal morning, she was by no means in a depressed frame of mind. Her friend, Hannah Cox, spoke of her as "very calm and in very good spirits," while the men who saw her in Bell Lane describe her as walking briskly along with no appearance of despair or dejection about her. Indeed, the witness Joseph Dawson, who exchanged a morning salutation with her, was so struck by the cheerfulness of her demeanour that he mentioned the fact at the inquest. Nevertheless, it may be unwise altogether to discard the hypothesis of suicide, but it is far more probable that her death was accidental Mr. Holroyd,[2] the son of the judge, explains the matter thus Having noticed that her shoes were stained with blood, she must, he thinks, have stopped close to the edge of the pit for the purpose of putting on her boots. No sooner, however, had she sat down upon the sloping bank than she was overcome by the physical fatigue and the emotions of the past twenty-four hours. As the medical evidence showed, it was many hours since she had tasted food and, under these conditions, she may have turned faint and have fallen into the water. There are certain objections, however, to this theory. Why should she select the steep bank of a stagnant pool as a suitable place for changing her shoes? Would not the footboard of a stile, and there was one within a few yards of the pit, afford a more convenient seat? And why should

[1] W. Thornbury, *Old Stories Retold*, published in 1870.

[2] E. Holroyd, *Observations upon the Case of Abraham Thornton*, p. 87.

she remove her bonnet? The fact that she took it off and placed it with her bundle on the bank suggests another, and a more probable, solution of the mystery. If she ventured down the side of the pit to wash herself, she may have removed it, lest it should fall into the water or lest its yellow ribbons might be splashed and suffer damage. On the whole this last conjecture—that she was drowned while seeking to wash herself—seems to offer the best explanation of her death.

The tombstone over Mary Ashford's grave can still be seen in the churchyard of the parish church of Sutton Coldfield. But time and the weather have rendered almost illegible the epitaph composed by Dr. Booker. It runs as follows:—

As a warning to Female Virtue
and a humble monument to Female Chastity
this stone marks the grave
of
MARY ASHFORD [1]
who in the 20th year of her age
having incautiously repaired
to a Scene of Amusement
without proper protection
was brutally violated and murdered
on the 27th May, 1817.

Lovely and chaste as is the primrose pale
Rifled of virgin sweetness by the gale,
Mary! the Wretch who thee remorseless slew
Avenging wrath, which sleeps not, will pursue,
For though the deed of blood be veiled in night
Will not the Judge of all the earth do right?
Fair blighted Flower! The Muse that weeps thy doom
Rears o'er thy sleeping Form this warning tomb.

[1] According to the certificate of burial she was twenty years of age. The funeral took place on 1st June, 1817. The tombstone was put up by public subscription.

Chronological Table.

May 26, 1817, - 6 p.m —Mary Ashford changes her clothes at Mrs. Butler's cottage at Erdington and with her friend Hannah Cox attends the dance at Tyburn House.

12 midnight —Hannah Cox leaves Mary Ashford on the turnpike road in the company of Abraham Thornton.

May 27, 1817, - 4 a.m.—Mary Ashford arouses Hannah Cox at Mrs. Butler's and changes from her dancing, into her working, clothes. A few minutes later she is seen in Bell Lane hurrying homewards

4 30 a m.—Thornton seen by several persons walking leisurely past Mr. Holden's farm in the direction of his home at Castle Bromwich

6.30 a.m —Mary Ashford's bundle, bonnet, and shoes discovered at the edge of the water pit near Penn's Mill.

8 a.m.—The dead body of Mary Ashford taken out of the water pit

10 a.m —Abraham Thornton arrested at Tyburn House, brought before Mr. Bedford, the magistrate, and makes a statement.

1 p.m.—Abraham Thornton's shoes found to correspond with certain footmarks in a harrowed field near the water pit.

7 p.m.—The dead body of Mary Ashford examined by Mr. Freer, of Birmingham, and Mr. Horton, of Sutton Coldfield.

May 29, 1917, - Mr. Freer and Mr. Horton perform a *post-mortem* examination of the body of Mary Ashford.

May 30, 1817, - The Coroner, Mr. Hacket, of Moore Park, holds an inquest on the body of Mary Ashford at Penn's Mill. Thornton attends the proceedings in custody.

May 31, 1817, - The Coroner's Jury return a verdict of "Wilful Murder" against Abraham Thornton, who is committed for trial at the Warwick Summer Assizes.

Aug. 8, 1817, - Abraham Thornton tried and acquitted of the murder of Mary Ashford.

Oct. 9, 1817, - Abraham Thornton arrested at Castle Bromwich on a warrant granted by the High Sheriff of Warwickshire to William Ashford, Mary Ashford's heir-at-law, who has "sued out" an appeal of murder.

Oct. 10, 1817, - Abraham Thornton removed from Birmingham to Warwick Gaol.

Nov 6, 1817, - The suit of *Ashford* v. *Thornton* opened at Westminster Hall in the Court of the King's Bench. Abraham Thornton transferred from the custody of the Keeper of Warwick Gaol to that of the Marshal of the Marshalsea.

Abraham Thornton.

Nov. 17, 1817, - *Ashford* v. *Thornton.*—The appellee, Abraham Thornton, pleads "not guilty" to the count of appeal which charges him with the murder of Mary Ashford, and, throwing a gauntlet on the floor of the Court, invokes his right to wage battle.

Nov. 22, 1817, - *Ashford* v *Thornton.*—The appellant's counterplea refuting the appellee's claim to trial by battle.

Jan. 24, 1818, - *Ashford* v. *Thornton.*—The appellee's replication heard.

Jan. 29, 1818, - *Ashford* v. *Thornton* —The appellant "demurs." The appellee joins issue.

Feb. 6, 1818, - *Ashford* v *Thornton.*—Mr. Chitty argues the case on behalf of the appellant.

Feb. 8, 1818, - *Ashford* v *Thornton.*—Mr. Tindall, on behalf of the appellee, rejoins.

April 16, 1818, - *Ashford* v *Thornton* —Further arguments by Mr. Chitty. Their Lordships pronounce in favour of the appellee's right to wage battle

April 20, 1818, - *Ashford* v. *Thornton.*—Formal judgment delivered in favour of the appellee, who is then arraigned at the suit of the Crown, pleads *autrefois acquit* and is dismissed without bail.

April 20, 1818, - In the House of Commons, the Attorney-General announces his intention of introducing a bill to abolish trials by battle.

Sept. 30, 1818, - Abraham Thornton said to have sailed from Liverpool for New York on board the "Shamrock."

1860, - - - Abraham Thornton said to have died at Baltimore, U.S.A.

Table of Distances.

	Miles.	Furlongs.
1. From Mrs. Butler's cottage on Erdington Green to the fatal pit by way of Bell Lane and the footpath across the fields, -	1	2
2. From the fatal pit across the harrowed field, along Bell Lane, through Erdington to Mr. Holden's farm, - - - - -	2	4
3. From the fatal pit across country to the Chester Road, then across country again to the canal, and along the towing path to Mr. Holden's farm (the route, according to the prosecution, the murderer followed), - - - - - -	2	2
4. From Mr. Holden's farm to the floodgates, close to which Abraham Thornton conversed with John Haydon, the gamekeeper, - - - - - - - - - - -	1	0

THE TRIAL.

AT THE SUMMER ASSIZES

HELD WITHIN

THE COUNTY HALL AT WARWICK FOR THE COUNTY OF WARWICK,

8TH AUGUST, 1817.

Judge—

MR. JUSTICE HOLROYD.

Counsel for the Crown—

Mr. NATHANIEL GOODING CLARKE, K.C.

Mr. SERJEANT COPLEY.

Mr. PERKINS (instructed by Messrs. Croxall & Hulbeche, Sutton Coldfield).

Counsel for the Accused—

Mr. WILLIAM READER.

Mr. HENRY REVELL REYNOLDS (instructed by Mr. Saddler, Sutton Coldfield).

Friday, 8th August, 1817.

The Officer of the Court read over the indictment which consisted of two counts. The first charged the prisoner, Abraham Thornton, with having, on the 27th of May last, in the Royal Town, Manor, and Lordship of Sutton Coldfield in the County of Warwick, not having the fear of God before his eyes, but being moved by the instigation of the Devil, wilfully murdered Mary Ashford by throwing her into a pit of water.

Officer of the Court—Abraham Thornton, are you guilty of this murder, or not guilty?

Prisoner—Not guilty.

Officer of the Court—God send you a good deliverance.

The Officer of the Court then read over the second count which charged the prisoner with having, on the morning aforesaid, committed a rape upon the body of the said Mary Ashford.

Officer of the Court—Prisoner, are you guilty of this rape and felony or not guilty?

Prisoner—Not guilty.

Officer of the Court—God send you a good deliverance.

Mr. Perkins briefly stated to the jury and the Court the nature of the charges against the prisoner.

The jury were called over and appeared.

Opening Statement for the Crown.

Mr. Clarke—Gentlemen of the jury, by the indictment which you have just heard read by the Officer of the Court, you are already acquainted, generally, with the nature of the crime, with which the prisoner at the bar stands accused. But it is a duty that devolves upon me, as counsel for the prosecution, to state to you, in a more minute and particular manner, the

precise nature of that charge. Gentlemen, the crime imputed to the prisoner is of the blackest cast, of the highest enormity, and one of the greatest offences that human nature is capable of committing, that of shedding human blood, the innocent blood of a fellow-creature. But, while I endeavour to lay before you the principal facts of the case, and such facts only as I shall call evidence, in the course of this painful investigation, fully to substantiate, I conceive it to be no less a duty in me to abstain from any observation that can exceed those bounds, which public justice, as well as my duty, demands from me.

The deceased was a young woman of engaging manners, handsome in her person, and of unblemished character. She was well known in that part of the country, that is, at Erdington, and in the neighbourhood, near to which this barbarous crime was perpetrated; but the precise place, and all the horrid circumstances attending it, you will learn from the respective witnesses. The deceased was the daughter of poor parents—of poor but very honest parents—but she had lately been at her uncle's, who is a farmer at Langley. Under the roof of this relation she was still living when she met with a violent death, a death, under such distressing circumstances, that the mind shrinks, appalled, at the melancholy recital. For it will be proved to you, by a most respectable medical gentleman, who examined the body of the deceased, that, recently before she had been thrown into the pit, she had been treated with brutal violence.

Gentlemen, it will also be proved to you that the deceased, Mary Ashford, on the evening of the 26th of May, the night preceding the murder, went, in company with her friend and acquaintance, a young woman of the name of Hannah Cox, to a dance at a public-house in the neighbourhood of Castle Bromwich, called Tyburn House. The prisoner was one of the company, and it was at this house, and at this time, I believe, that the deceased first saw, or at least knew, the prisoner at the bar. The prisoner, it seems, when the deceased first entered the house, inquired her name and who she was. On being told by one of the company that it was old Ashford's daughter, he replied, "I have been connected with her sister,

and I will with her, or I'll die by it." The prisoner, after this, went into the dancing room, introduced himself into her company, and, as I am informed, went down a dance or two with her. About twelve o'clock the deceased and the prisoner left the house together. The deceased, it appeared, left for the purpose of returning home. Hannah Cox, the young woman who accompanied the deceased to Tyburn House, saw them together after they had left the house; and went part of the way with them. Another witness that will be called will tell you that he also saw them together at the same time. From this time, till three o'clock, we have no account of them. At three o'clock, a man, another of our evidences, saw them sitting on a stile, in the road between Tyburn House and a friend's of the deceased, living at Erdington, where the deceased had changed her clothes, previous to her going to the dance on the evening before. This was about three o'clock in the morning of the 27th. After this we hear no more of the deceased till about four o'clock; she then called at her friend's house, Mrs. Butler's, at Erdington Green, to change her dress, and put on the clothes she had worn on the preceding day. The deceased called up Hannah Cox, who let her in; and, at this time, this witness will tell you, she was in good spirits, and appeared as cheerful as usual.

Now, gentlemen, it will be shown that the deceased left this house between four and five in the morning of the 27th, and between that time and the time when the body was found in the pit, or rather the clothes were seen, which led one of the witnesses to suppose that some person had been drowned in the pit, which was about half past six in the morning, the horrid crime must have been perpetrated. Other witnesses will describe to you the appearance of a fallow-field, which had been recently harrowed. In this field were plainly traced the footsteps of a man and a woman. The footsteps led from a path in this field, towards Langley, which, I before observed to you, was the place where the uncle of the deceased resided, and where she was going when she left Mrs. Butler's. It will likewise be shown to you that the deceased was seen by several persons on her way towards this place. It will be stated, too, that these footmarks had been made by two persons who had

been both walking and running, and as if two persons had been struggling together. In following the traces of these footsteps, they led to a spot where there was an impression of a human figure extended on the ground. In the middle of this impression there was a quantity of blood, at the bottom of the figure there was a still larger quantity of blood—from this place was plainly to be traced a stream of blood, which gradually decreased into drops—and this blood lay in a direction leading to the pit in which the body was found. One of the witnesses will describe to you the exact situation in which the shoes, the bonnet, and the bundle of the deceased were found—they were lying at the edge of the pit. The footsteps in the harrowed field, it will be indisputably proved to you, were made by a man's and a woman's shoes, the marks of the man's shoes were made by the shoes worn at that time by the prisoner at the bar, and the marks of the woman's shoes, by the shoes which were then worn by the deceased, as they were compared, on the morning of the murder, by several witnesses—this fact will be proved to you too clearly to admit of the least possibility of a doubt. There was the mark, also, of a man's foot at the edge of the pit—slanting—the outside pressing harder than the other, and from this it is presumed, that that mark was made by a man who had leaned forward to throw the body which he had carried thither in his arms into the water. On the body being examined by the surgeons, there appeared, in one particular part, excessive lacerations, which could only have been produced by the most extreme violence—for, up to this time, there cannot be the smallest doubt but the deceased was a pure virgin. I shall not state to you any farther particulars of these appearances—they would be equally painful for you to hear, as for me to relate; they will be described to you by the surgeon who examined the body. There were marks of violence on each arm, as if done by the grasp of a man's hands while holding the deceased down upon the ground.

Gentlemen, you will perceive that nothing has transpired yet to bring the crime home to the prisoner at the bar. But you will find, from his own deposition, which will be produced and read to you, that he did not leave the deceased till four

o'clock on the morning of the murder—that he had been connected with her, which confession will be confirmed both by the appearance of his own dress, when he was taken into custody, and examined at Tyburn House, and the clothes of the deceased, which she had worn to the market at Birmingham the day before and exchanged for her dancing dress at Mrs. Butler's, they being stained with blood and dirt. The marks of the man's footsteps in the harrowed field were evidently made by the very shoes taken from his feet, and form altogether such a chain of circumstances, that in my mind leave but little doubt of the violation and murder having been committed by the prisoner.

These circumstances, gentlemen, are all of the utmost importance, and if they are clearly, positively, and indubitably proved by the evidence that will be produced to substantiate them, you can have no hesitation in finding the prisoner guilty of the crime imputed to him.

Evidence for the Prosecution.

HANNAH COX, examined by Mr. SERJEANT COPLEY—In the month of May last I was in the service of Mr. Machin, at Erdington, and I slept at my mother's, Mary Butler's, on the opposite side of the way, opposite my master's house. I knew the deceased Mary Ashford. She was about twenty years old and she lived with her uncle, Mr. Coleman, at Langley Green, about three miles from Erdington. I know William Coleman, the deceased's grandfather; he lives at the top of Bell Lane, near Mr. Freeman's. Mary Ashford came to my master's house on Monday, 26th May last, about ten o'clock in the morning. She had a bundle with her and she said that she was going to Birmingham market. I observed that she had on a pink cotton frock or gown, a straw bonnet with straw-coloured ribbons, a scarlet spencer, half boots and black stockings. The bundle that she had with her contained a clean frock, a white spencer and a pair of white stockings. I saw these things in her bundle and I went with her to Mrs. Butler's, to leave her bundle there. She then went on to Birmingham. She told me that she would come back as soon as she could,

Hannah Cox

as she and I were going to a dance at Daniel Clarke's public-house, Tyburn House, about two or three miles from Erdington, on the turnpike road. I next saw the deceased about six o'clock when she called upon me at Mr. Machin's, and we went over to Mrs. Butler's together, where she changed her dress. She put on the clothes that I have already described and a pair of new shoes which I had fetched for her from a shoemaker at Erdington. She left her other clothes at Mrs. Butler's. She and I set out to the dance between seven and eight o'clock. I went into the dancing room and stayed there for about quarter of an hour. I saw the deceased in the room. *Q.* Did you see the prisoner in the dancing room?—*A.* No. I left the public-house between eleven and twelve o'clock. *Q.* Did the deceased go out of the house with you?—*A* No. I spoke to her and she told me she would not be long. I went out and waited for her on the bridge, about thirty yards from the house. While I was on the bridge, Benjamin Carter came up to me. I sent him for Mary Ashford, and she and Abraham Thornton came out and joined us. This would be about ten minutes or quarter of an hour from the time I went on to the bridge. Mary Ashford, Abraham Thornton, Benjamin Carter and I then went towards Erdington. There was no other person with us. Thornton and Mary Ashford went on first. Carter stopped talking to me for some time, about ten minutes, and then I left him and followed the other two. Carter overtook me in nine or ten minutes, but he only stopped about two minutes and then said he would go back to the house, which he did After he left me I followed Mary Ashford and Thornton and overtook them and walked with them till we came between Mr. Reeves's and the "Old Cuckoo," which is a little before one comes to the road that leads off to Erdington. I did not go with them to quite where the road separates, but very near to it *Q.* Were you before the prisoner and the deceased at this time?—*A.* I walked on first and then took the road to the left of a house called Loar's and went home to my mother's and to bed. The "Old Cuckoo" is kept by a man called Potter. *Q.* Were you called up again at any time in the morning?—*A.* Yes, Mary Ashford came to my mother's house and I let her in. I looked at the clock and saw that it

was twenty minutes before five. The clock was fast compared with the other clocks in the neighbourhood. I noticed that Mary Ashford had on the same dress as she had had on that night. I did not perceive any agitation or confusion on her part Neither her person nor her dress was disordered, so far as I saw. She appeared to be very calm and in very good spirits She took off her clothes and tied them up in a bundle along with some market things—some sugar and other things which she had brought from Birmingham market the day before. She wrapped the boots in a handkerchief and kept on her shoes. She might be in the house for quarter of an hour altogether, but I cannot exactly say. She then went away and I saw no more of her. *Q.* What situation was the deceased in when she changed her clothes. Did she sit down on a chair?—*A.* No, she stood up. *Q* Did she stand up while she pulled off her stockings?—*A.* Yes. *Q* Did she do anything more in the house?—*A.* She did nothing more than change her dress. *Q.* Did you observe that the deceased's frock was stained?—*A.* No, but I did not take much notice of it. *Q.* Did she tell you that she had any complaint upon her?—*A.* No, she did not. I know the road that leads to the deceased's uncle's house—it goes along Bell Lane.

Cross-examined by Mr. Reader—Hannah Cox, you were an acquaintance of the deceased; were you and her very intimate? —Yes.

The deceased, you say, appeared in perfect health when she came to call you up?—Yes.

Do you know how old the deceased was?—I think she was about twenty.

Do you know the father of the deceased?—Yes, he is a gardener.

Where does he live?—At Erdington, near the place where I live.

Do you know where the deceased's grandfather lives?—He lives near Bell Lane, about a mile off.

How far is the place where you parted with the prisoner and the deceased from your own house?—About three-quarters of a mile.

How far is the deceased's grandfather's from the pit where

the body was found?—I can't say; it may be about three or four hundred yards.

When the deceased came and called you up in the morning, where did she say she had been?—She told me she had slept at her grandfather's.

How far is her grandfather's from Potter's?—About half a mile.

Did you say anything to the deceased, when she had called you up, about the prisoner?—I asked her how long Mr. Thornton stopped, and she said a good bit.

Did you say anything else to her about the prisoner?—I asked her what had become of him.

What answer did she make?—She said he was gone home.

Where did the deceased say she was going, when she left you in the morning?—She said she was going to her grandfather's.

Re-examined by Mr Serjeant Copley—I am quite sure that my mother's clock was fast when the deceased came to my mother's house. I cannot tell exactly what time it was by my mother's clock when the deceased first called me up, but I think it wanted about twenty minutes to five. I saw her change her stockings; she stood up at the time.

Was her frock stained? Was it dirty?—I did not observe anything particular about it.

Benjamin Carter, examined by Mr. Perkins—I am a farmer and live with my father at Erdington. On Monday night, 26th May, I was in the room where the dancing was at Tyburn House. I saw the deceased Mary Ashford and the accused Abraham Thornton dancing together there. I left the house between eleven and twelve o'clock and went to the bridge, to Hannah Cox, and stayed with her for about quarter of an hour. She asked me to go back to the house for Mary Ashford, and I did so. When I went into the room where the dancing was I saw Thornton dancing with Mary Ashford. I spoke to her and then I went back to the bridge. In about quarter of an hour Mary Ashford and Thornton joined us at the bridge. I went with them a little way towards home, and then turned back towards Tyburn House. I overtook Mary

Ashford, Thornton, and Hannah Cox again between Mrs. Reeves's and Mr. Potter's. Soon after that Hannah Cox left us by another road to go home. I went with Mary Ashford and Thornton to the turn of the road and then went home I saw no more of them that night.

JOHN HOMPIDGE, examined by Mr. CLARKE—I live at Witton, near Erdington, in the parish of Ashton I remember being in the lower part of Mr. Reynolds's house, at Penn's, on Tuesday morning, 27th May last While I sat in the house I heard somebody talking in the road This would be after two o'clock in the morning, and I heard the talking until I started home about quarter to three. I did not see anybody as I got out of the house, but when I got up to the foredrove I saw a man and a woman at the stile at the bottom of the foredrove. The foredrove leads into Bell Lane, and Bell Lane leads towards Erdington. When I got up to the stile I recognised the prisoner.

By the COURT—I had known him before

Examination continued—I bade him good morning, and he said good morning to me. I did not know who the woman was. I did not see her face She held her head down so that I could not see it. I left them sitting against the stile.

Cross-examined by Mr. REYNOLDS—You know the pit where the body was found afterwards?—Yes.

What distance is it from Reynolds's house?—About one hundred yards.

Is there another house in the neighbourhood, nearly adjoining the close?—Yes.

Who are there in Reynolds's family?—Thomas Reynolds and his daughter.

You were there at two o'clock, you say?—Yes.

Were you talking at that time with Reynolds or his daughter?—With his daughter.

What time did you go out of the house?—A quarter before three.

Did you leave Reynolds and his daughter up?—I left Thomas Reynolds's daughter up.

How long had you seen them before you came up to the stile?—I came within about a hundred yards of them before I

saw them; the girl was standing and he was leaning against the stile.

She evidently appeared to you as though she would not be known, and she held her head down?—Yes.

Re-examined by Mr. CLARKE—Was Reynolds up or in bed?—He was in bed.

You were courting the daughter?—Yes.

THOMAS ASPREY, examined by Mr. SERJEANT COPLEY—I live at Erdington. I remember being on the road near Erdington at about half-past three on the morning of 27th May last. I was going to Great Barr and I was crossing Bell Lane, leaving Erdington on the left and Bell Lane on the right—I was passing by Greensall's house There is a horse-pit in Bell Lane, on the right, very near Erdington I saw Mary Ashford. She was against the horse-pit and was walking very fast towards Erdington. She was alone. I looked up Bell Lane in the direction from which she was coming, but I did not see any other persons about there.

Cross-examined by Mr. READER—Was the deceased going in a direction towards Mrs. Butler's house?—She was.

How far was it from the spot where you saw her to Mrs. Butler's house?—About a quarter of a mile

You saw no other person yourself?—No.

You were going in the direction towards Barr?—Yes.

Re-examined by Mr. SERJEANT COPLEY—Bell Lane is about twenty-one yards wide there. It is straight for a considerable distance.

JOHN KESTERTON, examined by Mr. PERKINS—I live with Thomas Greensall, farmer, at Erdington. I was up soon after two o'clock on Tuesday morning, 27th May. I was at the stable to fettle the horses. The stable looks towards the road that leads into the village of Erdington. I put my horses to the wagon at four o'clock that morning and I took them to water at the pit in Bell Lane, by the side of the road. When my horses had drunk I turned them round and went along the road through Erdington for Birmingham. After passing Mrs. Butler's house I turned to look back and I saw Mary Ashford coming out of the widow Butler's entry. I smacked

my whip and she turned and looked towards me. I saw her quite distinctly. This was about quarter past four in the morning. When she came out of the entry she went up Bell Lane—the road that leads for Freeman's and Penn's. She seemed to be going in a hurry. At that time I hardly knew the prisoner Thornton by sight, but I had seen him. *Q.* Did you see any person like him that morning on the road?—*A.* No, I saw no person but her. The road is very broad and I could see for some distance, but I saw nobody on the road

Cross-examined by Mr. READER—You knew the deceased very well?—Yes

You could not therefore be mistaken in her person?—No.

And you saw her about quarter past four coming out of the entry?—Yes.

You saw nobody else?—No.

JOSEPH DAWSON, examined by Mr. CLARKE—I am a labourer. I saw Mary Ashford about quarter past four, as near as I can guess, on the morning of 27th May last. She asked me how I did and I asked her how she did, and then passed on. She had a straw bonnet and a scarlet spencer, and she had a bundle in her hand. I know Mrs. Butler's house in Erdington and I know Bell Lane. It was between Mrs. Butler's house and Bell Lane, near Henry Holmes's house, that I saw Mary Ashford. We were close together. She was walking very fast towards Bell Lane. I did not see any man about at that time.

Cross-examined by Mr. READER—That would be the way either to her grandfather's or her uncle's, where she lived, would it not?—Yes.

THOMAS BROADHURST, examined by Mr. SERJEANT COPLEY—I remember being on the turnpike road leading from Tyburn on 27th May. I crossed the road leading by Freeman's house, Bell Lane. Before I came up to Bell Lane I saw Mary Ashford. She had a bundle in her hand and was walking fast from Erdington towards Penn's. *Q.* What time was it in the morning?—*A.* I asked a man that was trenching, about two hundred yards below, and he said it was about ten minutes past four. When I got home it wanted twenty minutes to

five, which was a quarter too fast. *Q.* How long might it be between that time and the time you got home?—*A.* About seven minutes.

Cross-examined by Mr. REYNOLDS—What is the distance from that part of Bell Lane where you saw Mary Ashford to Erdington?—Half a mile and better.

Do you know Mrs. Butler's house? How far is it from Mrs Butler's house to Erdington?—I suppose about a quarter of a mile.

GEORGE JACKSON, examined by Mr. PERKINS—I follow the labouring business, and I live in Hurst Street, Birmingham. I came out of Birmingham on Tuesday morning, 27th May. I was at the top of Moor Street, Birmingham, about five o'clock, and I was going beyond Penn's Mills, betwixt Newhall-fields and Sutton, to work I came from Birmingham to the workhouse at Erdington and then along the road for Penn's Mills. I do not know the name of the road *Q.* Do you know the name of that road where you turn by the workhouse?—*A.* No. *Q.* Did you turn out of the road?—*A.* I turned out in the foredrove that leads for Penn's, out of Bell Lane. Going along that foot road I came to a pit. When I came near the pit I observed a bonnet, a pair of shoes, and a bundle; they were close by the top of the slope that leads down into the pit. I looked at them and I saw one of the shoes all blood. I then went towards Penn's Mills to fetch a person to come and look at them. I brought a man Lavell from the first house—he was coming out of his own door and we went to the pit. I told him to stand by these things while I fetched some more hands from Penn's Mills so that nobody should meddle with them. Going down from the pit along the footpath I saw some blood about thirty yards from the pit; it might be about a couple of yards round, in a triangle. *Q.* Do you mean in length?—*A.* Yes, zig-zag, about two yards. I went a little further and saw a lake of blood by the side of a bush. I saw some more on some grass to the left. I then went forward to the works at Penn's Mills to let them know what had happened. I got some assistance and I sent them to Lavell at the pit. I went on to Penn's Mills to let them know. When

I returned to Lavell the persons I had sent were there. *Q.* Did you stay till the body was found?—*A* No, I went to my work.

Cross-examined by Mr. Reynolds—What is the distance from Birmingham to this pit?—It might be about five miles or five and a half miles, as near as I can guess.

A public road the whole way?—A public road.

You left Birmingham at what time?—About five.

What was the time when you arrived at the pit?——

By the Court—How far is it from Moor Street to the pit?—About five miles.

Cross-examination resumed—It was, I suppose, then between six and seven when you got to the pit?—About half-past six.

How near to the public road is the pit?—Close to the footpath; the footpath is close to the carriage road, separated by a hedge.

The pit, I believe, is close to a stile?—Yes

The field in which the pit is was a grass field, I believe?—Yes

The field immediately before it, coming in the way you did, is a ploughed field, I believe?—Yes.

Through which there is a public footpath?—Yes.

In order to get from this ploughed field into the field where the pit is, it is necessary to get over a stile, is it not?—Yes.

The ploughed field is separated from the field in which the pit is by a high hedge?—Yes.

And the only communication is by this stile?—Yes.

How far is this stile from the pit?—It might be two or three yards to the place where the bundle was.

The bundle and things, if I understand you, were on the edge of the pit?—Yes.

Is not the pit where you saw the bundle very steep?—Not very steep, in a middling way.

You said at first very steep—now you say in a middling way—is it not rather steep than otherwise?—It is

How far are Penn's Mills off?—About half a mile.

Mr. Webster has there a considerable manufactory?—Yes.

Were the men all collected at work, when you arrived there?—I did not see any of them at work, but I saw several about.

This was the 27th of May?—Yes.

George Jackson

In point of fact, between four and five in the morning. Is not that a very common hour for labourers in the fields to be up?—Yes.

Re-examined by Mr. PERKINS—How far might it be from the place where the bundle and shoes were to the pit?—It might be about four yards from the top of the slope to the water

What time was it when you got to Mr Webster's works?—I cannot tell—it was soon after I went to Lavell's—it might be half an hour or three quarters of an hour after I first saw the bundle till I got to Mr. Webster's works.

By the COURT—How far were the bundle and shoes from the top of the slope?—About a foot.

WILLIAM LAVELL, examined by Mr. CLARKE—I am a workman at Penn's Mills. I remember seeing George Jackson on Tuesday, 27th May. In consequence of what I heard from him I went up to the pit. I know the harrowed field through which the footpath from Erdington to Mill Lane goes; it is adjoining the field where the pit is. I went along the footpath to see if I could discover any footsteps. *Q.* In going along thereabouts in the field did you discover any footsteps?—*A.* The first steps were a man's, going from the pit towards Erdington. They were going across the ploughed field to the right hand, as I was going to Erdington. There is a dry pit at the corner of the field to the right. *Q.* Can you tell whether those men's footsteps were coming up towards that dry pit?—*A.* Yes, they were. I went higher up that path towards Erdington, and about eight yards distant I discovered a woman's footsteps. *Q.* Which way were those footsteps going from the footpath?—*A.* They were going the same way, to my right. I traced the steps of the man and the steps of the woman from these two spots. *Q.* Can you tell us whether these two footsteps that you have mentioned appeared to meet together at any time?—*A.* No, not at all. *Q.* Did they come up together so as to run near each other? I am now speaking of the steps turning out of the path. You have said that the first steps were a man's going towards Erdington, and that about eight yards distance you discovered a woman's steps?

—*A*. Yes, they got together about fifteen yards nearer the hedge. I could tell by the stride and sinking into the ground that they were running. I traced them, running together, up to the far corner where the dry pit is. *Q* What did you observe when you got to that corner?—*A*. I observed them dodging backwards and forwards. I could not tell whether they appeared to be still running. They seemed shorter, as though they had been dodging about. *Q*. Did you trace those steps any further?—*A*. I traced them on the grass at the corner of the piece to that dry pit. *Q*. Was that the same dry pit? —*A*. Yes, on the right hand side. *Q*. Could you tell which way they went when they got upon the grass?—*A*. Towards the water pit in the harrowed field *Q*. You traced them up to that pit on the grass; did you trace them on the grass or on the harrowed ground?—*A*. On the harrowed ground. *Q*. Did you observe how these footsteps appeared to be?—*A* They appeared to be walking; sometimes the woman's feet went on the edge of the grass and sometimes on the edge of the field. *Q*. Did the man's feet keep on or go off the grass?—*A* There was one place where they were both off together. *Q*. Could you see if they had been on the grass?—*A*. Yes, they had. I traced those footsteps leading that way down to the first pit, the water pit in the harrowed field. I could not trace them any further. We traced the man's foot till it came to the hard road. *Q*. What was there to prevent you from tracing the woman's feet further?—*A*. Because they were on the grass, on the left of the man's I could not trace them any further towards the second pit. The road beyond was hard. *Q*. Did you trace any footsteps of anybody, in a contrary way, going from the pit in the harrowed field?—*A*. Yes They began at the footpath. *Q*. Were they the footsteps of a man or a woman?—*A*. Of a man. The man whose footsteps they were appeared to be running. This was on the harrowed ground. There were no other footsteps than those of a man going that way at that time. There were no woman's footsteps. I traced those steps about three parts up the piece—it might be rather better—towards the dry pit. The footing turned down to the left as I was pursuing the track, and I traced the footsteps down to the gate at the further corner, crossing the footpath at the middle of the piece or near.

William Lavell

After the footsteps had turned they appeared to be the footsteps of a man who was running. They went quite up to the corner. There were no other tracks than those of a man. I could not trace them any further than the gate which led into some meadows, towards Pipehall. I know Castle Bromwich. *Q.* Can you tell whether that road would carry one to Castle Bromwich?—*A.* It would get into the great Chester Road, for Castle Bromwich, that way. *Q.* From Penn's Mill Lane, which would have been the regular road to Castle Bromwich, from the corner of the pit?—*A.* Straight across the piece up the foot road, and so into Bell Lane. *Q.* Can you tell whether, by the way that you traced those steps to the corner of the field, a man would get sooner to Castle Bromwich than going the regular way?—*A* Yes. From the gate where I lost the footsteps there was no regular road to Castle Bromwich. *Q.* To go that way must he cross the fields?—*A.* Yes, he must go upon trespass. *Q* But would that make a shorter cut?—*A.* Yes. *Q.* Did you afterwards take any shoes and go to this field and try the footsteps with those shoes?—*A.* Yes, I went with Joseph Bird with the shoes. *Q.* Whose shoes were those which Joseph Bird took?—*A.* Abraham Thornton's. We did not take any woman's shoe at that time. The shoes we had were right and left shoes *Q.* Can you tell whether those footsteps of the man appeared to be made with right and left shoes?—*A.* Yes, they appeared to be the footsteps of the same man. We tried those shoes on about a dozen of the footsteps. *Q.* Did the person's shoes fit those person's all exactly?—*A.* Yes *Q.* Did you compare them with the footsteps on both sides of the way?—*A.* Yes. *Q.* Have you any doubt whether those footsteps were made with those shoes?—*A.* None; no doubt at all. *Q.* Did you compare them with the footsteps that turned off the road, about eight yards from where the footsteps of the woman turned off?—*A.* Yes. *Q.* Did they fit there?—*A.* Yes. *Q.* Did you compare them with those parts where the man and woman appeared to be running together?—*A.* Yes. *Q.* Did they fit there?—*A.* Yes. *Q.* Did you compare them with where they dodged, as you spoke of?—*A.* Yes. *Q.* Did they agree in all those parts?—*A.* Yes. I covered some of the footsteps with

boards, up by the dry pit. *Q.* Had those shoes, or either of them, any particular nail?—There was a sparrow-bill. *Q.* Was there any at the toe of either shoe?—*A.* There was not on one side. *Q.* Which shoe?—*A.* The right. *Q.* Were there any marks of this sparrow nail on those that you covered?—*A.* There was one step trod on a short stick which throwed the foot up, and there were the marks of two nails. I tried the shoe with that footstep. *Q.* Were there any nails which fitted those marks?—*A.* They were so small we could not observe that. *Q.* Did you after that go with a woman's shoe to this place?—*A* Yes. I went with Bird. We took Mary Ashford's shoe and compared it with the woman's footsteps that I had traced I compared it with those that turned to the right. *Q.* Did you compare it with the steps where the man and woman appeared to be running?—*A.* Yes. *Q.* Did you compare it with the woman's steps where the doubling was?—*A.* Yes. *Q.* Did you compare it with those where the woman was sometimes on the grass and sometimes off?—*A.* Yes, in every place. *Q.* Did the shoe agree or not with those footsteps?—*A* Yes, it corresponded. *Q* Did you take one or both shoes?—*A.* We took both. *Q.* Have you any doubt in your mind whether the steps all along were made by those shoes you had?—*A.* I have no doubt. *Q.* Did you see any footsteps of any sort near the edge of the slope of the pit where the body was found?—*A.* Yes, one. It appeared to be a man's footstep, and it appeared to be the left foot sideways. *Q.* Can you tell whether it inclined either from the slope or towards the slope?—*A.* It inclined towards the slope. I did not compare the shoe with that footstep. I saw where the bundle was by the side of the pit. Beside the bundle there was a pair of shoes and a bonnet. The shoes were not tied up in anything. *Q.* Were those shoes which you saw by the side of the pit the shoes which you compared with the footsteps?—*A.* Yes. *Q.* Did you see any blood anywhere near that pit?—*A.* Yes, below the gate, about forty yards from the pit. *Q.* Did you see any blood nearer the pit than that?—*A* Yes, about fourteen yards up, nearer the pit. *Q.* Did you trace that blood?—*A.* Yes. *Q.* Did you say that you traced it for fourteen yards?—*A.* Yes. There was a train of blood for fourteen yards. It ran straight up towards the pit,

across the path and then about a foot from the path on the clover. *Q.* Where you saw it on the clover were there any footsteps?—*A.* No. The drops of blood that I saw on the clover were about a foot from the footway. There was dew on the clover. *Q.* Did the blood on the clover appear to be a track of blood or a few drops?—*A.* It came in drops at last, but it was a regular run where it first came on the clover—not all the way.

Cross-examined by Mr READER—How far is your house from the pit?—Between two and three hundred yards.

Do you live next to Reynolds's?—Yes.

You worked at the mill?—Yes.

Had you been at work that morning?—No.

What time do the men at the mill collect?—Half-past six.

What time did you rise that morning?—It might be twenty minutes after six.

Were there any of the rest of your family up at that time?—No.

The first you heard of this was by Jackson calling you?—Yes.

You have given us an account of the footsteps; had there been much rain that morning?—I could not tell.

Had there been a storm before you traced the steps?—No.

At what time did you begin to trace them?—About seven o'clock.

What time did you trace the man's shoe?—It might be one o'clock on the same day.

Had there been a thunderstorm, or a hard shower of rain fallen between the time you first saw the steps and the time you tracked them?—It rained while we were going.

Had it rained before?—I do not know as it did.

How many tracks did you cover with the board?—Two of the man's and one of the woman's.

Was it before the rain began?—Yes.

In what part of the field did you put the boards?—Near the dry pit.

There were a great many people collected on the ploughed

field, were there not?—At one time after another, but not then.

Do you think there were more than one thousand footsteps then?—Not then.

Were there not a great many other footsteps beside the steps you had traced in the morning?—Yes, there were a great many.

Some thousands, perhaps?—I won't say thousands.

Were there not a great number of footmarks of other persons?—Yes.

Did you try the shoes of any of those persons to see if they corresponded with the marks?—Yes.

And they corresponded too, did they?—No.

With the man's shoes, do you mean?—Yes.

Did you try the marks of the shoes of any other persons there with what you supposed to be the prisoner's?—No.

You say that when you began to trace, you first traced the man's shoes in the direction towards Erdington?—No.

Then you traced them backwards and forwards, over different parts of the close, towards the dry pit?—Yes.

Some appeared to be running and some walking?—No

In the course of the tracing you traced them sometimes running and sometimes walking?—Yes.

At times running and at one time walking?—Yes.

You describe them as though you had seen them; all that you mean is that in some places the marks were deeper and the strides greater?—Yes.

Some parts of the harrowed field were, I suppose, softer than others?—Partly of a nature all over it.

This must have occupied these persons walking and running, as you describe, a long space of time, must it not?—Yes.

From what you saw and observed, do you think it could have taken up less time than half an hour?——

By the COURT—What was the distance from the footpath where the tracks were to the dry pit?—One hundred and forty yards, I suppose.

Cross-examination continued—How far from the dry pit to the other pit?—Near upon the same length.

William Lavell

Then you traced them above, in different parts beside that?—I traced them down from the top end to the pit.

That harrowed close is not the close in which the body was found?—No.

The pit you speak of is within the close in which the dry pit is, in the harrowed close?—Yes.

You say you saw some blood about forty yards from the pit where the body was found, that is, in the next close?—Yes.

That was greensward?—Yes, clover.

You saw but one mark of a footstep on the edge of the pit?—No.

How far might that be from the edge of the pit?—Close to the slope.

You did not measure that?—No.

How many persons had been near that spot before you found the marks?—There had not been a great many then.

Had there been any before you observed that one footstep?—I observed that when I got up first.

You were called there by Jackson?—Yes.

You did not observe any marks of blood in the harrowed field?—No.

You have been speaking of seeing a footing going across from the dry pit, crossing the footpath, to the other corner of the close?—Straight across the close, across the path, up to the other corner.

You have been asked whether it would not lead to Castle Bromwich?—Yes, it would.

Could they go by Tyburn House?—They could if they liked.

Which would be the nearest?—By trespass, they might have gone a nearer way.

Would that not have led him into the Chester Road; he must have got into the Chester Road, must not he?—Yes.

Could not anybody have got in less time to Castle Bromwich if they had gone over hedge and ditch as you suppose?—Yes, I suppose they could.

You have been talking about the spots of blood that went towards the pit, and you traced them, you say, for fourteen yards?—Yes.

There were no footsteps of any sort?—No.

Of neither man's nor woman's; there was a footpath by the side?—Yes.

You represent the blood to be in a zig-zag?—The whole of the blood in a straight line.

Near the pit there was only one footstep?—Only one.

Now, could you tell whether it was a man's or a woman's?—I could not.

Re-examined by Mr. CLARKE—It is about one hundred and forty yards from the footpath up to the dry pit where I traced the footmarks. I do not think that a person would be long in making all those footmarks.

JOSEPH BIRD, examined by Mr. SERJEANT COPLEY—I was called on to go to the pit mentioned by the last witness on 27th May last. I there found the last witness, Lavell, and several other persons. I took the shoes of the prisoner and of Mary Ashford to compare with the footmarks. Lavell was with me. I know the public footpath that crosses the harrowed field *Q*. In going along that path from the pit were there any footmarks of a man on the right?—*A*. Yes, as we went up the path towards Erdington, turning off the footpath, up to the upper corner where the dry pit is. *Q*. Going on further along the footpath towards Erdington, did you find any footmarks of a woman turning off also?—*A*. Yes, the footsteps turning to the right. *Q*. The footsteps of the man, you say, were to the right, and then the footsteps of the woman. Did they meet?—*A*. Yes, a few yards up they came in contact. After they came in contact they went to the pit at the corner. In the corner, near the dry pit, they appearing running and dodging, and one person catching another. *Q*. Were they to appearance running?—*A*. Yes, the strides were longer and they had the appearance of a heavy man running. *Q*. What makes you think that the persons had been running?—*A*. By the length of the stride and by the little scrape at the toe of the woman's shoe. The heels of the man's shoe sunk very deep, as if made by a heavy man. At the dry pit, from the corner, the footmarks took a direction along the hedge side to the bottom of the harrowed field. They then seemed to be walking, as the strides were shorter

Joseph Bird

than those across the field, nor were the impressions so deep. I traced the footsteps from this spot very nigh to the water pit. It was a dewy morning. The woman was sometimes on the grass and sometimes on the ploughed land I cannot say whether the footsteps of the man were ever off the grass or not. We traced those footsteps not quite up to the footpath, very nigh to the water pit in the harrowed field *Q* Did you trace from this place the footsteps of a man alone?—*A*. I traced the footsteps of a man going up the field in an opposite direction, up to the dry pit. When they got to the pit then the footmarks turned short to the left, across the path, and down to a gate at the far corner. They were the footsteps of a man only. Judging from the stride and the impression, they appeared to be made by a man running. *Q*. Did you compare the prisoner's shoes with the tracks down the field?—*A*. Yes. *Q* Did you compare them with the tracks on both sides of the footpath, where they turned out of the road?—*A*. Yes. *Q*. Did you compare them after the footsteps had joined the woman's?—*A*. Yes. *Q*. And did they all exactly correspond?—*A*. Yes. *Q*. Did you compare the two footsteps that had been covered by the boards?—*A*. Yes The shoes were made right and left I knelt down and blew the dirt out of the right footstep to see if there were any nail marks. There lay a bit of rotten wood across the footstep which had turned the outside of the shoe a little up, and the impression on that side of the foot was not so deep as the others. I observed two nail marks on that side where it was shallowest. The shoes were nailed, and there was a space of about two inches where the nails were out, and they were nailed again. I marked the first nail on the side of the shoe, and then kneeled down to see if they exactly corresponded, and they did exactly. I could see the second nail mark at the same time, as well as under the shoe, and they fitted in every part exactly. *Q*. Did you compare the tracks of the woman's feet with the deceased's shoe?—*A*. Yes. They corresponded exactly. Where the running over the ground was there was a dent or scraping in the ground, and by looking at the shoes, the leather of one shoe was raised at the toe more than the other, from being wet—the shoes were not alike, and the impressions varied accordingly, agree-

ing with the form of each shoe. *Q.* By examining the tracks of both the man's and the woman's shoes, have you any doubt but they were all made by those shoes?—*A.* None at all. *Q* When did you examine the woman's shoes?—*A.* About ten or eleven o'clock, and then I went to Tyburn House to fetch the man's shoes. I observed the tracks on the ploughed field about seven o'clock, before the body was found. The body was taken out of the pit about seven o'clock. Pursuing the man's footsteps to the gate would lead into the Chester Road, and that direction would lead the man into the Chester Road considerably before he got to Tyburn House. If a person had gone along the turnpike road, he must have passed Tyburn House and several other houses before he got to Castle Bromwich. If he had turned to the right he might have got to that place, over the fields, where there is no footpath. There is no regular footpath that way, except a bit of a road that turns off near Samuel Smith's house, which is used by the market people, and goes down to Occupation Bridge and crosses the canal by the side of Adams's piece. Pursuing that road, anybody might have gone down to John Holden's either by going down the towing path of the canal or by the road

Cross-examined by Mr. Reynolds—You think a person might have gone to Holden's by the way that has been pointed out?—Yes; but I think the straight and nearest road is along the turnpike.

Men walk in many different ways, don't they; some upright, some rather upon their heels, some leaning forward upon their toes, some take long steps, and some short ones?—Yes, I believe they do

And some take quite as long strides when they walk as when they run?—I never saw a man take longer steps in walking than he did in running.

Don't you recollect a thunderstorm that morning?—It rained sharpish as I returned from Tyburn House to measure the footsteps, but I don't recollect any thunderstorm.

How long do you think it might rain?—It might rain a quarter of an hour.

Before you left there had been many persons walking about?—Yes, there had been some.

Joseph Bird

How many, a hundred perhaps?—No, not so many.

How many, then, do you think?—There might have been thirty or forty.

Thirty or forty persons walking over the ground, and some, perhaps, where the boards were placed?—No, they were ordered to be kept off by Mr. Bedford

What time did Mr. Bedford come upon the ground?—About nine or ten o'clock.

How many persons were in the ploughed field at that time?—There might be about a score in at that time

Re-examined by Mr. SERJEANT COPLEY—What time in the morning did you first see the footmarks?—About seven o'clock.

Had there been many persons in the harrowed field then?—No.

JAMES SIMMONDS, examined by Mr. PERKINS—I am a labourer and work at Penn's Mills. I went to the pit where the body was found on the morning of 27th May. I got there about seven o'clock. I then went home and fetched a heel-rake and some long reins, and came back and dragged for the body. After throwing the rake into the water three or four times we dragged out the body. It was the body of Mary Ashford. *Q.* In what state was the body when it was taken out of the pit?—*A.* There was a little mud and some oak leaves about the face.

JOSEPH WEBSTER, examined by Mr. CLARKE—I live at Penn's Mills, which belong to me. On the morning of 27th May I was informed that a woman was drowned in a pit not far from my house, and in consequence of that information I went immediately to the pit. As soon as I got there, about eight o'clock, the body was taken out of the water. I ordered the body to be taken to Lavell's house, and I sent the bundle, the bonnet, and the shoes with it. I observed, on a spot about forty yards from the pit, a considerable quantity of blood; it lay in a round space and was as large as I could cover with my extended hand. I also observed the impression of a human figure on the grass, on the spot where the body was. The shoes I had sent with the body were stained with blood. It appeared that the arms and legs had been ex-

tended quite out—the arms had been stretched out their full length; a small quantity of blood lay in the centre of the figure, and a larger quantity of blood lay at the feet. I perceived what appeared to be the marks of the toes of a man's large shoes at the bottom of the figure on the same place. The largest quantity of blood at the feet of the figure was much coagulated. I traced the blood for ten yards, up by the side of the path, towards the pit. At the stile, a little below this spot and further from the pit, in the continuance of the footpath, the marks appeared as if one or more persons had sat down. These marks were on the other side of the stile, in the next field, and in a contrary direction from the harrowed field. I did not observe anything else at this time. I went home to dress, and returned again in about an hour. When I came back I went into the harrowed field, and there I perceived the traces of a man's and woman's foot. They were pointed out to me by Bird. I had previously ordered my servants to look over that field. On seeing these footsteps I sent for the shoes that I had previously sent with the body to Lavell's house. On comparing those marks with the shoes, I found that they corresponded exactly. There was a spot of blood on the inside of one of the shoes, and on the outside of the same shoe, on the inside of the foot, there was much blood.

(The shoes were called for, and the witness pointed out the spots to the jury which he had alluded to in his evidence.)

By the COURT—Is it a spot on the inside of the shoe that you have described?—Yes. At that time the marks were quite plainly to be seen. They are not so plain now.

Examination continued—After comparing the shoes with the footmarks in the harrowed field, I went to Lavell's house to examine the body. The spencer had been taken off. On each arm I observed what appeared to me to be the marks from the grasp of a man's hand. I did not observe anything more about the body at that time. I know Mrs. Butler. I set my watch with Mr. Crompton's, and then went the same morning to Mrs. Butler's house at Erdington to examine her

clock. My watch I believe to be very accurate. On comparing them I found that Mrs. Butler's clock was forty-one minutes faster than my watch. *Q.* Did you see the clothes on the body?—*A.* I did. They were a red spencer, a coloured gown, and black worsted stockings. I observed much blood on the seat of the gown; it was in a very dirty state. There was blood also on the other parts of the gown. The clothes I have spoken of were the same as were on the body when it was taken out of the pit. Lavell's wife took care of them. I had them in my possession till I delivered them to Dales, the officer, after the prisoner had been examined by Mr Bedford.

Cross-examined by Mr. READER—I examined Mrs. Butler's clock very accurately, and I found that it was forty-one minutes too fast compared with my watch. My watch goes by the Birmingham time, by the church clocks

Mrs. FANNY LAVELL, examined by Mr. SERJEANT COPLEY—I am the wife of William Lavell, a previous witness I remember the body of Mary Ashford being brought to my house on 27th May last. A bundle of clothes was sent to me at that time by Mr. Webster, also a bonnet and a pair of shoes. I took those things to Mr. Webster the next day. I untied part of the clothes of the deceased and the other part I tore off from her body. I found her clothes to be in a very bad state. The gown was very much stained behind. The gown was very dirty—blood and dirt The shift had a rent up one side, the length of my hand. I did not see any blood on the stockings.

(At this stage Thomas Dales, one of the assistants to the police at Birmingham, produced the bundle which he had received from Mr. Webster. It contained the clothes worn by the deceased at the time of her death. The pink gown was much stained with blood, and dirty, the water had caused the blood to spread over the seat of the garment. The white petticoat presented a similar appearance. In the chemise there was a rent at the bottom, about six inches in length,

which was discoloured. The deceased had no flannel petticoat on. On the black worsted stockings a spot or two could be perceived, but they were so faint that no one could determine what had been the cause of them.)

(The clothes that the deceased had taken off at Mrs. Butler's and tied up in a bundle, found by Jackson at the edge of the pit, and which she wore at the dance, were also shown to the jury and to the Court The frock had spots of blood upon it, on the skirts behind. The white spencer was quite clean. The white cotton stockings were very much discoloured. The stains large spots from the tops down to the ankles.)

MARY SMITH, examined by Mr. PERKINS—I live at Penn's Mills. I examined the body of Mary Ashford on the morning of 27th May, at William Lavell's house, about half-past ten in the morning. The clothes had been taken off before I got there.

(The witness described the general appearance of the body.)

I cannot state from what cause these appearances proceeded. On each arm, just above the elbow, there was a black mark which appeared to me to have been made by the grasp of fingers.

WILLIAM BEDFORD, examined by Mr. CLARKE—I am a magistrate for the county. I went to Tyburn House on 27th May last and took the deposition of the prisoner at one o'clock, which is now shown to me. That deposition was first read over to the prisoner and signed by him afterwards in my presence.

The Officer of the Court read the deposition of the prisoner, which stated in substance that he (Abraham Thornton) was by trade a bricklayer; that he lived with his father at Castle Bromwich; that he had been at a dance at Tyburn House on the

night of the 26th of May last; that he danced with the deceased (Mary Ashford), and came away from the house with her early the next morning; that Hannah Cox and a young man of the name of Carter went part of the way with them; that after examinant and deceased were left by the other two they walked on by themselves till they came to a stile, and then they went over four or five fields; that they afterwards came back to the stile again, and sat on it, talking about a quarter of an hour; while they sat there a man came by who wished them a good morning; examinant wished him a good morning; that they soon afterwards went on towards Erdington; he went to the green at Erdington with Mary Ashford, and then she went on by herself; she said she was going to Mrs. Butler's; that he waited on the green some time for the deceased, but, as she did not come back, he then went towards home. In his road home he saw young Mr. Holden near to his father's house; he also saw a man and a woman in the road there, at the same time; that after he had passed Mr. Holden's house he saw John Haydon, Mr. Rotton's gamekeeper, taking up some nets at the flood-gates, near Mr. Twamley's Mill, and spoke to him; he stopped to talk with him about a quarter of an hour; that he also saw John Woodcock, Mr. Twamley's miller, while he stood talking to Haydon, but he did not speak to him; that he afterwards passed James White, who was at work at Mr. Wheelwright's bank; and then he went straight home. Examinant further said that when he got home it wanted twenty minutes to five, by his father's clock; he took off a black coat which he had on, and put on another; he also took off his hat and hung it up in the house; that he did not pull off his shoes, though they were very wet, from walking through the grass; he said that he had been drinking the whole evening, but not so much as to make him intoxicated.

Thomas Dales, examined by Mr. Serjeant Copley—I am one of the assistant constables of Birmingham. In consequence of some information I received, I went to Tyburn House on the morning of 27th May last. I got there about ten o'clock, and soon afterwards I took the prisoner into custody. When I first went into the room, Daniel Clarke (the landlord) and some others were there along with the prisoner. I first saw Mr. Bed-

ford, the magistrate, there about eleven o'clock. By that time I had taken the prisoner into custody. I do not remember what I said to the prisoner when I took him into custody. We were all talking together for some time. I told him he was my prisoner, and, along with William Bedson, I took him into a room upstairs. Mr. Sadler also went into the room with us. I examined the prisoner's small clothes and his shirt, and found that they were both very much stained. I did not observe anything on any other part of his dress. I asked the prisoner how his clothes came to be in that state, and he said he had been concerned with the girl, by her own consent, but that he knew nothing about the murder. The prisoner was afterwards examined in my presence by Mr. Bedford, the magistrate.

Cross-examined by Mr. READER—How long had you been with the prisoner before Mr. Bedford came to Clark's?—An hour or more.

Did he confess to you that he had had a connection with the deceased before he was taken to be examined?—Yes, he did—I believe he did.

Did any one hear it besides yourself?—I can hardly tell—I think not—I do not recollect that anybody was present at that time.

Did you tell Mr. Bedford what the prisoner had said before he examined him?—No, I believe not.

Re-examined by Mr. SERJEANT COPLEY—Did the prisoner tell you that he had had connection with the deceased before the magistrate came to Clarke's?—I'm not quite sure whether he said so before or after.

You are sure he did say so to you, are you?—I'm sure he said so, when we were searching him upstairs

You are quite sure of that?—Yes.

Who heard him make that confession besides yourself?—Mr. Sadler and William Bedson were present.

Who is Bedson?—I don't know

Didn't you know him before?—No, I never saw him before that morning.

He assisted you, I suppose; he was called in by somebody?—I suppose so; he went with us upstairs when I went to search the prisoner.

William Bedson

WILLIAM BEDSON, examined by Mr. PERKINS—I assisted the last witness in examining the person of the prisoner

(The witness corroborated the statement of Dales respecting the prisoner's clothes.)

I took possession of the prisoner's shoes from off the ground. I did not see the prisoner pull his shoes off. I delivered the shoes to Mr. Bedford, the magistrate

JOHN COOKE, examined by Mr. CLARKE—I am a farmer and live at Erdington. I was at a dance at Tyburn House on the night of 26th May last. I saw the prisoner there that night and I also saw the deceased Mary Ashford come into the room. When Mary Ashford came in I heard the prisoner ask Mr. Cottrell who she was, and Cottrell said, "It's old Ashford's daughter." I then heard the prisoner say, "I know a sister of hers, and have been connected with her three times—and I will with her, or I'll die for it." I am quite sure I heard the prisoner say those very words, which were spoken not to me but to Cottrell. I was standing quite close and I could hear distinctly what was said. I do not think any one else heard the prisoner use those words to Cottrell, but I heard them quite distinctly.

Cross-examined by Mr. REYNOLDS—You say that you believe nobody heard this conversation pass between the prisoner and Cottrell but yourself?—Yes, I don't think anybody else was near enough.

Of course, you remonstrated with Thornton on his making use of this expression, didn't you?—No.

Then, to be sure, you went immediately and told the young woman, Mary Ashford, what you had heard?—No, I didn't say anything to her.

No, not when you heard that the prisoner threatened violence to her person, did you not immediately go and acquaint her with her danger?—No, I did not say anything to her about it.

No; why you knew her well, and all her family—you knew her father and her grandfather, and had known them all for many years, yet you heard the prisoner use this dreadful

threat against the deceased—an acquaintance, as it were—and the relation of your neighbours, and you did not say anything at all about it?—No.

Why, how can you account for that?—I did not tell her, as I did not think anything more about it.

Were you examined at the coroner's inquest?—No.

No; how was that?—I can't tell

Why, you knew when the inquest was held, I suppose, and still you were in possession of this conversation and didn't say one word about it; you kept it all to yourself?—I never was asked to go before the coroner. I was at the house at the time, and should have gone if I had been called for.

Did you never hear that Cottrell denied that he ever heard the prisoner say what you have stated?—Yes, and when I heard that I went to the house at the inquest; he never denied it to me.

Re-examined by Mr CLARKE—I was at Tyburn House when the inquest was held on the deceased. I never heard that Cottrell was examined before the magistrate or before the coroner.

Did you ever mention the conversation that you heard pass between the prisoner and him, in the dancing room, to Cottrell?—Yes.

Was any other person present at the time?—Yes, several.

Did Cottrell deny it then?—No, he did not.

DANIEL CLARKE, examined by Mr. SERJEANT COPLEY—I keep Tyburn House, where the dance was held on the night of 26th May last. In consequence of hearing of the misfortune that had happened to the deceased, I went to Castle Bromwich in search of the prisoner. I had heard of the body being taken out of the water before then. I met the prisoner on a pony on the turnpike road near the Chapel, and I said to him, "What has become of the young woman that went away with you from my house last night?" He made no answer. I then said, "She is murdered and thrown into a pit." The prisoner replied, "Murdered!" and I said, "Yes, murdered!" He then said, "I was with her till four o'clock this morning." On his saying that I said, "You must come

along with me and clear yourself." The prisoner replied, "I can soon do that," and then he and I rode towards Tyburn House, which is about a mile from Castle Bromwich. *Q.* Had you any conversation with the prisoner as you went along?—*A.* Not about the murder. *Q.* What did you talk about?—*A.* Things as we saw, as we passed along. We talked about farming. *Q.* What, did you not say anything more to the prisoner about the murder?—*A.* No. *Q.* Did the prisoner say nothing to you about the murder?—*A.* No. *Q.* I suppose it was the circumstances that distressed your mind very much—you were no doubt very much shocked when you heard of the death of the deceased?—*A.* Yes, very much. *Q.* And you went together a mile at least and neither of you mentioned another word about the matter at all, did you?—*A* No, neither of us. When we got to Tyburn House the prisoner put his pony into the stable and said he would walk over the grounds, the footway to Sutton. He went into the house and had something to eat and drink, which would take a little time. *Q.* And nothing was said between you after the prisoner and you got into the house?—*A.* No. I did not hear him say anything more about going to Sutton. He stopped at my house till the constable came and took him into custody.

Cross-examined by Mr. READER—You say that you and the prisoner did not converse about the murder as you went along the road?—Yes

Why, you did not allude to the murder at all, after what passed between you at first, did you?—No.

Nor he either?—No.

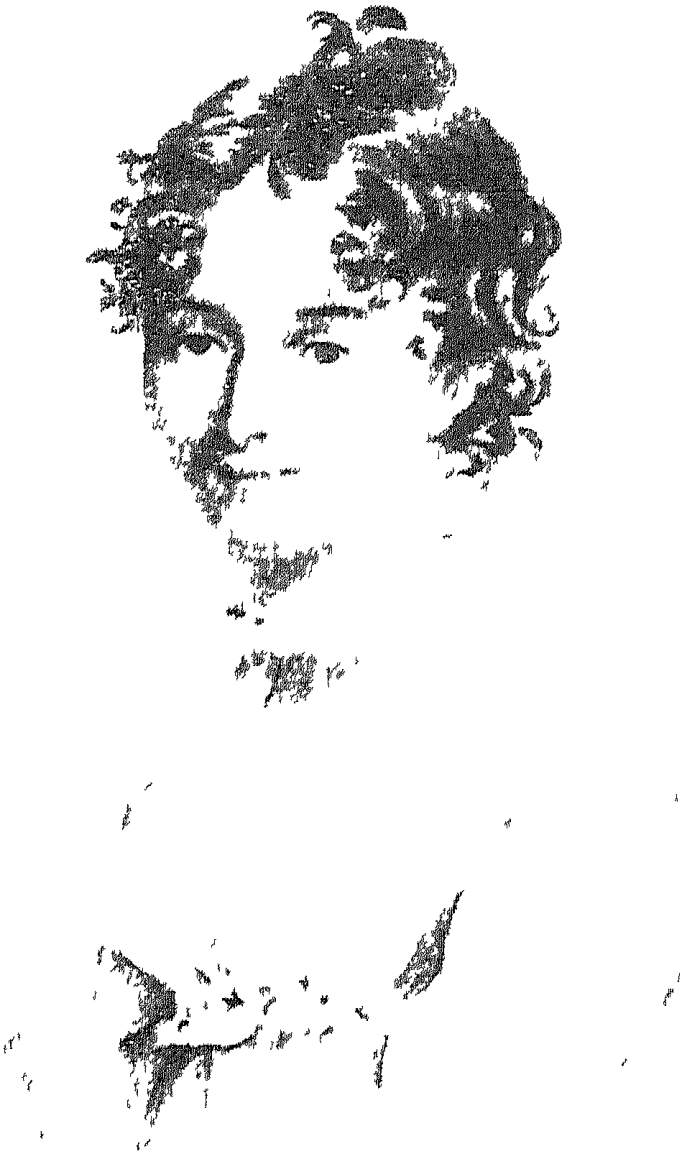
Do you think the prisoner had heard of the murder of the deceased before you told him?—No, I don't think he had.

And on you telling him he immediately said, "Murdered! Why, I was with her till four o'clock"?—Yes.

And he told you so instantly, without any consideration?—Yes.

Why, you would not have known that the prisoner had been with the deceased till four o'clock in the morning, should you, if he had not told you?—No.

By the COURT?—Did the prisoner appear confused when you first told him of the murder?—I think he appeared a little confused when I first told him of it.



Mary Ashford

(Drawn by J. Partridge)

Cross-examination continued—Why, you were greatly affected at the melancholy circumstance, weren't you?—Yes, I was.

And the prisoner might have been equally affected with yourself, might he not?—Yes, he might; I can't say.

Persons in general, labouring under any very great distress of mind, are not inclined to talk much, I should think, are they?—I should think not.

Then, as you say, you never said a word of the murder to the prisoner, on the road between Castle Bromwich and your house, there was nothing more remarkable in the prisoner not mentioning the circumstance to you than in you not mentioning it to him, was there?—No.

(At this stage William Lavell was shown the half boots which he said were the same as were taken out of the bundle that was found by the side of the pit His lordship examined the black stockings which the deceased had on when she was taken out of the water. He said they seemed perfectly clean, except for a spot or two which he thought he could just perceive on one of them. They were handed to the jury, who also examined them. The prisoner's shoes were also produced, and were examined by the Court and afterwards by the jury.)

George Freer, examined by Mr. Clarke—I am a surgeon practising at Birmingham. I remember being sent for to attend the coroner's inquest at Penn's Mills on 27th May last. Mr. Horton, surgeon, of Sutton Coldfield, also attended. I arrived about half-past seven in the evening, and took a cursory view of the body then. The body was placed in a very small and dark room, and I ordered it to be removed into another room, which was larger and more convenient for the examination. While they were removing the body I went to examine the pit where the body was found. On examining the pit I observed a quantity of blood, lying in various places, near to the pit. When I returned to the house the body had been removed into another room and had been undressed.

George Freer

The blood had been washed from the upper surface of the body. Between the thighs and the lower parts of the legs there was a good deal of blood. The parts of generation were lacerated, and a quantity of coagulated blood was about those parts. As it was then nearly dark, I deferred the opening of the body until another day. On the Thursday morning I proceeded to open the body and examined it more minutely. There was coagulated blood about the parts of generation, and she had her *menses* upon her. I opened the stomach and found in it a portion of duck weed and about half a pint of thin fluid, chiefly water. *Q.* In your judgment, what was the cause of the deceased's death?—*A* In my judgment she died from drowning. There were two lacerations of the parts of generation quite fresh. I was perfectly convinced that until those lacerations the deceased was a virgin. The *menses* do not produce such blood as that. I had no doubt but the blood in the fields came from the lacerations I saw Those lacerations were certainly produced by a foreign body passing through the *vagina*, and the natural supposition is that they proceeded from the sexual intercourse. There was nothing in them that could have caused death There might have been laceration though the intercourse had taken place by consent. Menstruation, I should think, could not have come on from the act of coition. I think it came on in an unexpected moment. The exercise of dancing was likely to have accelerated the *menses*. There was an unusual quantity of blood. The deceased was a strong, well-made girl, about five feet four inches in height.

William Fowler, examined—I am a land surveyor at Erdington. I prepared the plan of the pit where the body was found, the grounds adjacent, and surrounding country, which has been produced in Court by the counsel for the Crown. It is correct.

Evidence for the prosecution closed.

Evidence for the Prisoner.

HENRY JACOBS, examined—I am a land surveyor in Birmingham I produced a plan which I made for the use of the defence. My plan is perfectly correct. I measured the distances with the chain, and I am sure that they are quite correct.

Mr. JUSTICE HOLROYD—Prisoner, now is the time for you to make your defence Your counsel have done all they can for you They cannot address the jury in your behalf. All they could possibly do they have done by cross-examining the several witnesses brought forward in support of the prosecution. The Court and jury will now hearken with patience and attention to anything you have to say.

The PRISONER—My lord, I shall leave it all to my counsel

WILLIAM JENNINGS, examined by Mr. READER—I am a milkman living at Birmingham. I buy milk from Mr. John Holden, near Erdington, and I go to his place every morning to fetch it. I went there on the 27th May last as usual. I was examined before the coroner's inquest. I saw the prisoner, on the morning of 27th May, coming down the lane leading from Erdington to Mr. Holden's house as if he came from Erdington. It was about half-past four o'clock as near as I could judge, but I had no watch. I do not know Mrs. Butler's, nor do I know Greensall's or the workhouse at Erdington. I am not acquainted with the country. *Q.* Having no watch, how did you know what o'clock it was?—*A.* My wife, who was with me, afterwards asked of Jane Heaton, servant at Mr. Holden's, what o'clock it was; she looked at the clock and told her. *Q.* How long was it after you saw the prisoner before your wife asked Jane Heaton what time it was?—*A.* Before she inquired and after I saw the prisoner we had milked a cow apiece in the yard, which might occupy us about ten minutes. The cows were not in the yard then; they were a field's-breadth from the house. The prisoner was walking very leisurely when I first saw him, without the least appear-

ance of heat or hurry about him. My wife saw him as well as myself.

Cross-examined by Mr CLARKE—Where were you when you first saw Thornton?—I was standing in the lane, within about thirty yards of Mr. Holden's house, on the great road.

How long had you been standing there?—About five minutes.

How far was the prisoner from you when you first saw him?—He was within twenty yards of us, coming down the lane. He was between the canal bridge and Mr. Holden's house.

Could you tell whether he came down the towing path of the canal or down the lane from Erdington?—No, I can't tell that; I did not see him till he was within twenty yards of me.

You say you had been standing there about five minutes before you saw him?—Yes.

Re-examined by Mr. READER—How far could you see down the towing path, from the place where you stood?—Between three and four hundred yards.

Then if he had come that way you would have seen him?—If he had come down that way I think I must have seen him.

Mrs MARTHA JENNINGS, examined by Mr. REYNOLDS—I am the wife of the last witness. I was with my husband at Mr. Holden's on the morning of 27th May last. While I was there I saw the prisoner pass. I had not known him before. He was coming gently along. This was about half-past four in the morning I know the time, because I inquired soon afterwards what time of the morning it was from Jane Heaton, Mr. Holden's servant. Between the time I saw the prisoner and the time we began to milk we waited some time for young Mr. Holden, who had gone to fetch up the cows into the yard, and we had each milked a cow apiece before I asked Jane Heaton the time of the morning. I think it must have been a quarter of an hour at least from the time I saw the prisoner. My husband and I were examined before the coroner's inquest. We were standing in the road near Holden's house when the prisoner passed us.

Cross-examined by Mr. SERJEANT COPLEY—Where were you

standing when you first saw the prisoner?—In the road, near Mr Holden's house.

Much nearer the house than the canal bridge?—Yes.

How long had you been in this position?—About five minutes We were looking at a cow that was running at a great rate down the lane; when she had passed us we turned round to look after her, and then we saw the prisoner.

Then, as your backs were towards the prisoner, he might have come along the towing path without your seeing him?—Yes.

Re-examined by Mr. Reynolds—Which way did you and your husband come to Holden's that morning?—Along the towing path, from Birmingham.

How long was this before you saw the prisoner in the road?—Not many minutes.

You could see some distance along the towing path, and you saw nobody coming along it then?—Nobody

The prisoner, you say, was walking very leisurely when he passed you?—Yes.

He did not seem in a hurry, or in the least confused?—No

Jane Heaton, examined by Mr. Reader—I live at Mr. Holden's. I got up about half-past four on the morning of 27th May last. From the window of my room I can see the lane that leads from Erdington to Castle Bromwich It is just by my master's house When I was at the window that morning I saw a man walking along the road from Erdington to Castle Bromwich *Q*. Do you know who that man was?—*A*. I think Thornton is the man. He was walking quite slowly. After I went downstairs I saw Jennings and his wife; they came to ask what o'clock it was, and I looked at my master's clock to tell them. It wanted seventeen minutes to five. This was about quarter of an hour after I saw the man pass my master's house. The clock was not altered after I looked at it. I did not see either the milkman or his wife on the road when I looked out of the window.

John Holden, sen., examined by Mr. Reynolds—The last witness, Jane Heaton, is my servant. I was at home on the

John Holden, sen.

morning of the 27th May last. I do not know whether at that time my clock was the same as the Birmingham clocks I remember Mr. Twamley coming to my house on the Wednesday morning to examine my clock. My clock had not undergone any alteration since the day before. It is a good clock, and it did not require any alteration.

JOHN HOLDEN, jun., examined by Mr. REYNOLDS—I am the son of the last witness and I live with my father. The family consists of my father, my mother (who was ill in bed), myself, and Jane Heaton, the servant. I remember going to the grounds on the morning of 27th May last to fetch the cows up for Jennings and his wife to milk, but I do not know what time they came. I know the prisoner, Thornton, by sight That morning, as I came back from fetching the cows, I met him about two hundred yards from my father's house. He was walking quite slowly towards Castle Bromwich, and I saw him pass the house I do not know what time it was, but it was early.

WILLIAM TWAMLEY, examined by Mr. READER—I live at Newhall Mill, near Sutton Coldfield, three miles from Castle Bromwich. *Q.* Did you take an active part in investigating the cause of Mary Ashford's death?—*A.* I was the cause of the prisoner being taken up. Mr. Webster and I agreed to ascertain the state of the clocks. I went to Mr. Holden's and Mr. Webster went to Castle Bromwich. I found Mr. Holden's clock to be exactly with my own watch as to time. I then went to Birmingham and found that my watch was just right with St. Martin's Church clock, and it wanted a minute and a half of the Tower clock there.

JOHN HAYDON, examined by Mr. REYNOLDS—I am gamekeeper to Mr. Rotton, of Castle Bromwich. I left my house about ten minutes before five on the morning of 27th May last. I went to take up some nets which I had put down the night before at the floodgates. As I passed Mr Zachariah Twamley's stables at Castle Bromwich I heard Mr. Rotton's stable clock strike five. About five minutes after that I saw the prisoner coming towards Mr. Twamley's Mill, in the

way from Erdington to Castle Bromwich. I knew him, and I asked him where he had been, and he said, "To take a wench home." He stopped talking with me about ten minutes or quarter of an hour, and then went off towards Castle Bromwich, where he lived.

By the COURT—What distance is it from the spot where you first saw the prisoner to Mr. Holden's?—About half a mile, as near as I can guess.

JOHN WOODCOCK, examined by Mr. READER—I am a miller, and work at Mr. Zachariah Twamley's Mill. *Q.* Did you see the prisoner talking with Haydon, Mr. Rotton's gamekeeper, at the floodgates on the morning of 27th May last?—*A.* I saw a man talking with the gamekeeper that I took to be him From a calculation I have since made, this must have been about ten minutes past five.

Cross-examined by Mr. SERJEANT COPLEY—Do you know the prisoner well?—Yes, very well.

But you were not sure it was him that you saw with Haydon at the floodgates?—I thought it was him.

You have said that it was ten minutes past five o'clock, by your calculation. Pray, let us hear how you calculate?—I went into the mill the first thing, and when I came out again I heard Mr. Rotton's stable clock strike five. I then went into a piece of wheat belonging to Mr. Smallwood, and came back again. It must have been soon after five when I saw the prisoner come up to Haydon at the floodgates, for I have walked the ground over since, and it takes me just ten minutes at a gentle pace.

J. W. CROMPTON, examined by Mr. REYNOLDS—I saw Mr. Webster in the harrowed field on the morning of 27th May, and I rode with him for company to Castle Bromwich. Before we went we compared watches, and we found that they agreed perfectly. My watch went by the Birmingham time, and, I believe, very accurately. From our observation, the Castle Bromwich clock was fifteen minutes faster than the Birmingham clocks.

JAMES WHITE, examined by Mr. READER—I remember seeing

the prisoner, on the morning of 27th May last, at Wheelwright's bank, where I was at work. This was at twenty minutes past five by Mr. Wheelwright's clock, which, I believe, was about right with the Castle Bromwich town clock. The prisoner was going towards his own home. The place where I saw him was about half a mile from his father's house and about half a mile from Mr. Twamley's Mill.

William Coleman, examined by Mr. Reynolds—I am grandfather to the deceased Mary Ashford. She did not sleep at my house on the night of 26th May She lived with her uncle at Langley.

Evidence for the defence closed.

Plans and Admeasurements.

The plans, which have been before mentioned, were now compared, and both found to be correct. They represented the fields around the fatal pit, extending from Erdington to Castle Bromwich. They were frequently referred to, both by the counsel for the prosecution and the prisoner The distances were as follows:—

	M.	F.	Y.
Distance from Mrs Butler's, opposite the Swan, at Erdington, to the pit where the body was found, at Penn's Mill Lane, - - - -	1	2	38
Distance, in a straight line, from the pit, across the grounds, to Mr John Holden's house, where the prisoner was first seen after Hompidge saw him with the deceased, at the stile, - - - - - -	1	4	61
Distance from Mr. Holden's house to the floodgates, near Castle Bromwich (1 mile within 9 yards), - -	0	7	211
Distance from the workhouse at Erdington to Holden's house, - - -	1	3	62

	M.	F.	Y.
Distance from the fatal pit, into the Chester Road, between Mr. Hipkin's and Mr. Grimley's house, from thence along the Chester Road, as far as Smart's cottage, and across the grounds to the canal bridge near there, and so on along the canal towing path, &c., to Mr. Holden's house, - - -	2	2	47

Charge to the Jury.

Mr. Justice Holroyd said that, as the jury had previously been informed, this was an indictment against the prisoner at the bar for the murder of a young woman of the name of Mary Ashford, by throwing her into a pit of water, whereby she was drowned.

Considering the offence to be of a very high and serious nature, as it related to the public as well as to the individual accused, it was their duty to dismiss entirely from their minds everything they had heard relative to this transaction before they came into Court to-day. Because this, as well as every other case of the kind, must be decided by the evidence that had been brought before them, and by that evidence only. From what he had seen of their attention in other cases, he had no doubt that they would act as conscientiously in this, and not suffer prejudice to interfere with their duty.

Another thing to be considered was that, if from the circumstances proved in evidence, suspicion could not be wholly removed from the party accused, yet, in order to convict a person of an offence of this nature, the evidence must be such as not to carry to the minds of the jury a reasonable doubt of his guilt. Whether the prisoner was blamable or not was not the question for their consideration; but they must consider, first, whether this young woman met her death by murder; and, if she did, then, secondly, whether the prisoner at the bar was the person that committed that murder.

The counsel for the prosecution did not insist that they had

Mr Justice Holroyd

produced any direct and conclusive evidence that the prisoner had committed the murder. They had inferred his guilt, principally, by combining all the circumstances which furnished satisfactory proofs against the prisoner. Crimes of the highest description, it was certain, might be proved by circumstantial evidence only; and sometimes that kind of evidence was the strongest of all others. But then, it must be taken and compared in all its parts, and considered in all its bearings. Witnesses might vary in their testimony in stating the appearance of the same things; but facts could not be altered; they always spoke for themselves and would not give way to opinions. But these circumstances, he must observe, must be clear, full, and perfect. Nothing should be wanting to complete the connection, or the whole would necessarily fall to the ground. They must, therefore, examine with the greatest care all the circumstances on which the proofs of guilt depended; and whether they amounted only to mere presumption and probabilities instead of positive and real facts.

If, on considering maturely all the circumstances of the case, they should be of opinion that no reasonable doubt existed, and that he was the person who committed the crime, in justice to the public the conviction of the prisoner must follow. But, if that should not be the case—if they should have good reason to doubt his guilt, though they could not consider him blameless, that would be a ground of acquittal.

Probably the jury might think, considering the time as spoken to by the last witnesses, that a good deal of the mystery of this transaction had been unravelled.

That this young woman was at the dance on the night of the 26th, and that this transaction happened on the morning of the 27th—that the prisoner was with her at the dance and during a great part of the night was perfectly clear; it was clear, too, that he had had connection with her; not merely from circumstances, but from his own acknowledgment. One point material for their consideration was—whether that connection took place with or against her consent. If the connection took place against her consent, then a rape had been committed, and that would be ground for the guilty party to wish to get rid of her testimony. If there were no rape, and the intercourse took place with the consent of the deceased,

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whether that consent was obtained by great importunity or not, that would make it less likely that he should commit murder. The conduct of the prisoner, too, when he was taken up, was very material to be attended to in considering the probability or improbability of his having been guilty.

But, in one point of view—with a view to infer the probability of his guilt—it would be very material to consider at what time the connection took place; whether before the deceased went and changed her dress at Mrs. Butler's, or afterwards Because, if they thought the connection took place previously to that time, then the deceased coming to Hannah Cox's, and making no complaint against the prisoner, would show that, if it had taken place before, that it had taken place by her consent; or, that the inference would be too uncertain to form any argument against the prisoner. He mentioned these things because they would be material in considering whether, at the periods of time at which the prisoner was proved to have been at considerable distances, the connection could have taken place after that time; that is, if the witnesses for the prisoner had spoken the truth.

It was a very commendable thing, on the part of Mr. Webster and Mr. Twamley, that they had taken such pains to ascertain the time, which was, sometimes, the main ingredient in ascertaining facts.

His lordship then proceeded to sum up the evidence.

In reciting Hannah Cox's testimony it was not material, he observed, to repeat all the circumstances about the deceased changing her dress and going to Birmingham. After alluding to what had occurred previous to her calling at Mrs. Butler's, his lordship said he then came to a part more material, namely, the time at which she called there. Now, according to Hannah Cox's evidence when the deceased called at her mother's it was about twenty minutes before five by her mother's clock. Her mother's clock was forty-one minutes faster than Mr. Webster's watch; and his watch was agreeable to Birmingham time. It was very material to see at what time the deceased came to Mrs. Butler's house, and what time she left; and, therefore, what space of time there was for the transactions to take place between that time and the time when the prisoner was seen three and a half miles from that

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place. It was twenty minutes before five by her mother's clock; that would be one minute before four by the Birmingham time when she was called up.

The gown and stockings which the deceased took off there were both bloody. Her dress did not seem disordered, and she appeared calm and in good spirits.

It would be ten minutes or a quarter past four when the deceased went away again. It was between two and three miles from thence to her uncle's, where she lived The deceased said she had slept at her grandfather's, to make an excuse to her friend for having been out all night Her grandfather's house was about a quarter or half a mile from the place where Hannah Cox parted with her on the preceding night; and when they parted she said she was going to her grandfather's.

Benjamin Carter's evidence, his lordship said, only went to the transactions of the night before, at the ball, and until they parted.

On Hompidge's evidence the learned judge remarked that if the persons whom this witness heard talking in the night, while he sat in Reynolds's house, were the prisoner and the deceased, it must have been previous to the time when she called at Hannah Cox's. He first heard the voices about two o'clock, and continued to hear them until a few minutes before he left. He set out from Reynolds's house about a quarter before three. Soon afterwards he saw them against a stile in the foredrove. The pit was distant about one hundred yards from Reynolds's house; and they must have come down there, agreeably to the account which the prisoner gave in his examination before the magistrate. The deceased, when this witness came up to them, appeared to wish not to be known, by her hanging down her head; but that was not unlikely, whether anything had taken place between them or not.

The period of time of their being together being about three o'clock, it must have been previous to the deceased having returned to Hannah Cox's; at which period they certainly had been in one or more of the closes, where the footmarks were afterwards discovered.

Asprey saw the deceased, about half-past three o'clock,

going towards Erdington, and walking very fast, at which time the prisoner was not with her; this must have been when she was going to Hannah Cox's; and at that time nobody was seen up the lane.

When Joseph Dawson saw the deceased it must have been after she had changed her dress, and was returning from Hannah Cox's. And, making an allowance for Mrs. Butler's clock, it would then be about ten minutes after four. So that she was then seen going on without the prisoner; and there was no evidence of any person seeing her with the prisoner after she had changed her dress

In remarking upon the testimony of George Jackson, his lordship said there were no footsteps on the slope down to the pit, except one of a man, which was not compared. Nor was this footstep seen until after Jackson had been there; and whose footstep it was did not appear Nor did it appear how the bundle, the bonnet, and the shoes came there; that was a mystery which was not explained by any part of the evidence.

Supposing the connection had taken place at a prior time, before the deceased had returned to Hannah Cox's, then a question arose whether there had been a fresh attack upon her. How she came there, or for what purpose, or how she came into the pond, did not appear; but this footstep was upon the very top of the slope leading down to the pit, which was rather steep than otherwise, and there were no other marks of footsteps

The bonnet, the bundle, and the shoes were found on the grass, about a foot from the top of the slope; and it would seem very extraordinary if the deceased, in despair, had thrown herself into the water, how she came to take off her bonnet and her shoes. How, therefore, the circumstances took place, whether she had fallen in, whether she threw herself in, or how she came there, there was no evidence to give information—the evidence was not positive on that point, and the conclusion, therefore, must be collected from comparing together all the circumstances of the case.

William Lavell's evidence, his lordship said, was material as to what was going on in the course of the night between the prisoner and the deceased. He described the footsteps of a man going out of the path leading towards Bell Lane; and

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also the footsteps of a woman leading the same way. These footsteps did not go off the path from the same place, as the jury would perceive by looking at the plan.

(His lordship held a plan in his hand, and pointed out to the jury, as he went on, the different roads and situations that had been alluded to by the respective witnesses in the progress of the trial)

About fifteen yards from the path they joined, or came together; and, from their appearance, this witness thought they had been running He traced these footmarks together, up to the corner of the field. It was not improbable but that the deceased, if she was coming that way, on seeing the man, had turned to run, and that they had both run together. There was a good deal of dodging about; this dodging was in a harrowed field, and, therefore, the footsteps could be easily traced. The witness traced the footmarks up to the grass by the dry pit—the same footmarks he traced down towards the water pit, in the same field. It was material that he could not see the footsteps of the woman on the grass, while on the edge of the pit the footsteps on the grass were plain to be seen. He then traced the footsteps of a man running in a contrary way, which turned to the left, and went down to a gate at the opposite corner of the field, making a shorter cut. The inference to be drawn from these circumstances was that the person, whoever he was, that had done the act ran away, and that those were his tracks.

From the circumstance of there being no footsteps to be seen near the pit where the body was found, and from some of the blood being there, the inference contended for was that the blood had fallen from a body carried; but it was questionable, on the other hand, whether the person whose blood had flowed there might not have walked; because she could not be tracked in other places on the grass, where there were no marks of blood.

When Mary Smith examined the body, which was about half-past ten in the morning, she states that it was not then cold; from which circumstance it was probable that the act was committed so much the later in the morning.

Charge to the Jury.

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In commenting upon the deposition of the prisoner, taken before the magistrate, his lordship observed—"It was a circumstance deserving consideration that the prisoner acknowledged having had connection with the deceased before he was compelled to make that disclosure, to account, on the examination of his person, for the appearance of his clothes

"When Daniel Clarke first saw the prisoner and told him that Mary Ashford was murdered, he immediately answered, 'Murdered! I was with her till four o'clock.' So that, the jury would perceive, in neither of these instances was there any concealment"

After concluding the evidence for the prosecution, his lordship remarked—"It did seem that these persons, the prisoner and the deceased, were upon the stile about three o'clock; so that they had been together during the night about the spot where these transactions took place. He was inclined to suppose that the connection had taken place before the deceased went to Hannah Cox's. If it happened after, then the prisoner was never seen with her, by any person, after she left that house. The jury were to consider whether it could or could not have happened after. And, if after, then whether the prisoner was the person who committed the act."

In commenting upon the evidence of William Jennings his lordship said—"It seemed, by his examination, that the prisoner might have come down by the canal towing path, through the meadows (which his lordship pointed out on the plan); and it certainly was possible that he might have done so. But then he must have gone the distance of three miles and a half from a quarter-past four o'clock, and all this pursuit, and the transactions which followed, must have taken place within the period of time within which he was afterwards seen. It would have taken up no inconsiderable space of time, including the running and the pursuit; and he thought it could not be done in a quarter of an hour. If the prisoner had been running there would have been an appearance of warmth in his person; but he was seen walking slowly, and without any appearance of heat or confusion."

After going through the evidence for the prisoner, his lordship said—"This is one of those mysterious transactions in which justice could not be done but by comparing most

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carefully all the facts and circumstances of the case—all the circumstances for, as well as those against, the accused. And before they could convict the prisoner they must be fully satisfied that he was guilty of the murder. If any fair and reasonable doubt arose in their minds as to his guilt, the prisoner was entitled to the benefit of those doubts But if they were convinced that the evidence was satisfactory, and that the crime was fully proved against the prisoner, they were, in justice, bound to pronounce him guilty Yet, in coming to this conclusion, it was their duty well to consider whether it was possible for the pursuit to have taken place, and all the circumstances connected with it, and for the prisoner to have reached Holden's house, a distance of nearly three miles and a half, in so short a time—a period of not more than twenty minutes ''

In concluding, his lordship observed to the jury " that the whole of the evidence lay before them—and by that evidence only they were to be guided in their decision. It were better that the murderer, with all the weight of his crime upon his head, should escape punishment than that an innocent person should suffer death ''

The jury consulted together about six minutes without retiring and returned a verdict of " Not Guilty."

The jury were then re-sworn upon the second indictment charging the prisoner with a rape.

Mr. Serjeant Copley informed the Court that they did not mean to offer any evidence on the part of the prosecution in support of this indictment.

Mr. Justice Holroyd then directed the jury to acquit the prisoner, and they immediately returned a verdict of " Not Guilty."

APPENDICES.

APPENDIX I.

APPEAL OF MURDER INTENDED TO BE COMMENCED AND PROSECUTED AGAINST ABRAHAM THORNTON FOR THE MURDER OF MARY ASHFORD CASE FOR THE OPINION AND ADVICE OF MR CONST. (3 guin.)

Abraham Thornton was tried at the last Warwick Summer Assize, on the 8th August 1817, before the Honble Mr Justice Holroyd, for the Murder of Mary Ashford, Spinster, on the 27th of May last, and the Jury returned a Verdict of Not Guilty—The Jury were then resworn on another Indictment charging Thornton with a Rape on the body of the said Mary Ashford, to which Indictment Thornton pleaded, as he had before done to the Charge of Murder, Not Guilty—Mr Sergt. Copley having informed the Court and Jury that he had no Evidence to offer on the Indictment for the Rape, (there being no other evidence than that which had been already before the Court on the Trial for the Murder) the Jury, under the direction of his Lordship, also returned a Verdict of Not Guilty.

Whereupon the prisoner was discharged, and is now at large.

The Heir at Law, who is the eldest brother of the deceased, has determined to prosecute an Appeal against Thornton for the Murder, pursuant to the Statute of 3^{d} of Henry the 7th c.,—and, in order that a person acquitted on an Indictment of Murder might be forthcoming to answer an Appeal, if brought, the above Statute enacts "That if it happens any person, named as principal or accessory, to be acquitted of any such murder at the Kings Suit, within the year and day, that then the same Justices, afore whom he is acquitted, shall not suffer him to go at large, but either to remit him again to the Prison, or else let him to Bail, after their discretion, till that year and day be passed."

In this Case, the Judge not only discharged Thornton, but did not take Bail for his appearance as required by the above Statute, and no application was made to the Court on the subject.

The object most immediately in view is, to secure the person of Thornton without delay to answer the intended appeal, and it has been suggested that the Judge may probably have it in his power to grant a Warrant for his apprehension, inasmuch as that, under the above Statute, he might have recommitted him at the close of the Trial, till the year and Day were passed

The printed Accounts of the Trial sent herewith, and the accompanying printed Sketch of the Pit Fields and Roads referred to on the Trial, and the Observations at the back of such Sketch, will, together give a tolerably correct idea of the Case against Thornton.

See 2 Cases of Appeal. Bigby Widow ag^{t} Kennedy, & Smith Widow ag^{t} Taylor—in Burrow's Reports, Vol. 5 pages 2643 and 2798—Also see the following Cases in the Criminal Calendar—James Cluff hanged at Tyburn, on an Appeal of Murder, 1729, having been previously acquitted on Trial of Indictment Christopher Slaughterford hanged at Guildford on an Appeal of Murder, 1709, having been previously acquitted on Trial by Indictment—Slaughterford's Case was very similar to the present one of Thornton, and the Appeal was lodged in the name of Henry Young, the Brother and Heir of the deceased—See also Salkeld 1, p. 60, etc.

You will be pleased to peruse the Printed Papers sent herewith, and above referred to, also the Statute of 3^{d} Henry 7th c., &c.

And Advise Specially—

What steps must be taken for the immediate apprehension of Thornton.

What Proceedings must be taken after his Apprehension to bring him to Trial, and Where, When, and before Whom, will his Trial take place?

And you are requested to give your Opinion of the probability or improbability of his conviction.

And generally to communicate your sentiments on the subject.

The first question Mr Const is particularly requested

to answer with all possible dispatch, for the immediate information of Mr Bedford.

Mr C. may take longer time for considering his answers on the other questions.

The mode of proceeding by Appeal of Death altho' formerly the usual method of bringing the Offender to Justice (for Indictments were suspended for the year and day to give priority to the Appellant) have from the necessary accuracy requisite in latter times been but seldom resorted to—and as Mr. Justice Blackstone observes from the penalties cast on the Appellant by the 13th Edw^{d} 1 Ch. 12 when unsuccessful, they ceased to be in common use—some few solitary instances however are to be found in the Books, and the Report of Bigby v. Kennedy by Mr. J^{s} Burrows, elucidates the manner in which the process should be conducted—but that applies to Defendants in custody, whereas the cardinal point here is how to get him into custody—The Act of 3d H 7, Ch. 1, which enacts that the Indictment shall place immediately, and in case of Acquittal that the prisoner shall be detained, or baild, as long as the time for appealing shall continue, also says that it may be brought before the *Sheriff and Coroners* of the County, or before the King in his Bench, or *Justices of Gaol delivery*, consequently the obvious way would have been to have *commenced in proper person* before the Justices of Gaol delivery during the sitting of the Court under that Commission—but in fact the Prisoner was set at large and the Assizes were terminated without any application on the part of the Appellant—consequently as it ought to have been in open Court before the proclamation for the delivery of all against whom no application was made, I do not see by what means the Judge can now grant any Warrant for his apprehension. If I am right in that—and as the Coroners Inquisition was of course returned to the Assizes, and he has no further power—the only mode left is by suing out a Writ returnable into the Court of King's Bench; but as the object is to procure the speedy apprehension of Thornton, that will not be obtained, and I confess I see no other way of proceeding. As this sort of prosecution is so little in use, a custom has obtained (notwithstanding the

Statute) of permitting a prisoner, who is acquitted to be discharged at the end of the Assizes, unless cause, etc.—and the reason of the thing seems to require it. Otherwise a man acquitted of the Act, would undergo as much punishment as he formerly would for being found guilty of manslaughter. I can add nothing to what I have said on this point—the 23d. Chr of Hawkins' *Pleas of the Crown*, with its references, contains all the law on the subject and is so applicable to the case that I must refer to it generally, for any extract would be imperfect—the subsequent proceeding, I conceive, would be on the Writ being returned to bring up all the proceedings to the Court above by *Certiorari* and to arraign the prisoner there.

The next query is a difficult one, and I feel considerable hesitation how to answer it—the probability of his being convicted depends on so many different circumstances of which I am uninformed, that I can scarcely form an Opinion, even from the Evidence—the Verdict already given, and given so quickly by the Jury who tried the question and who were able to appreciate the merit of the witnesses by their conduct and demeanour, which cannot always be done from the most accurate statements, must necessarily create a pause in the mind of the most sanguine advocate for public justice—fortunately I was not called upon to anticipate what would have been the result of the trial, on the evidence now before me, for I am free to confess my judgment would have been fallacious, but the Verdict makes me think that I must have contemplated the horror of so inhuman a crime as that wherewith Thornton is accused, so acutely as to be incapable of separating it from the prisoner, which those, whose duty it was to decide, were by their own observations and the assistance of the Judge enabled to do—the behaviour of the Prisoner was also an ingredient in the case, for it is scarcely in human nature that so atrocious a villain as the perpetrator of that murder must be, could be so cool and collected as he is represented—had the Jury been long before they had given their Verdict, or had they differed in their first impressions, much might have been surmised, but the verdict following so close, seems the result of a gradual conviction, and therefore another Jury would have (after the same evidence) an arduous task

to pass a different one—As I am desired to communicate my sentiments I have said so much, and the result is that I think it by no means certain that a different verdict would be given on the Appeal, if it is proceeded in.

Sept 13, 1817. (Sgd.) F. Const

First Opinion by J. Chitty (5 guin.).

In the Matter of the prosecution of Thornton.

In this interesting case I have examined all the books and cases on the subject and made enquiries and search at the different offices and at the Crown Office in particular. I have seen the actual proceedings in appeals as well by Bill as by Original. As Thornton is not in custody the proper course will be to issue a *writ* of Appeal directed to the Sheriff of Warwickshire This writ will be obtained at the Cursitors Office at the Rolls in Chancery Lane. There was a seal to-day but as the name and addition of the Appellant (the elder brother of Mary Ashford) was not known, the writ could not be issued but there will be another seal in about a week. With respect to the form of the Writ that recited in a *Habeas Corpus* filed in the Crown Offices supposes that the Appellant had *already* found security (See also *Wilson* v *Law*, 4 Mod 287) but this appears incorrect. See *Thesaurus Brevium* 1687. *Castell* v. *Bainbridge Lawr*, 2 Str. 851, from which it appears that the proper form is to direct the *Sheriff* to *take pledges* and they ought to be *real* pledges—though it may be collected from Rast. 46 that if the Sheriff return that there are no pledges, pledges may be found in Court on the return of the Writ. I do not find the form of the *Security* to be taken by the Sheriff, I would recommend for greater caution that the Sheriff should take the security conditioned for the appearance of the Appellant at the return of the Writ and prosecuting his appeal with effect in *two forms*. One nearly in the form of a recognizance conditioned to prosecute an Indictment. See forms Chitty's *Crim. Law*, 4 Vol. 41 d. and the other in the form of a Bail or Teplevin Bond. The writ being issued the Sheriff should make his warrant to arrest Thornton

nearly in the terms of the writ and having apprehended him must keep him in custody without bail and just before the next ensuing Term the writ should be regularly returned by the Sheriff stating the actual pledges for prosecuting the appeal and the subsequent attachment of Thornton by his body and having him in custody ready, etc: as directed by the Writ a *Habeas Corpus* must be issued from the Crown Office to bring the prisoner into Court and the Appellant must be in Court and count or declare upon the writ the other proceedings must be pointed out as they arise. There appears no great difficulty in the proceedings in an Appeal and though in the case in 5 Burr. 2645 and 2 Sir W. Bla: Ref. 716 the Court animadverted upon the proceeding yet it appears that that *particular* prosecution was dictated by a *party spirit* against the Government and was therefore objected to by the Court and in *Young* v. *Slaughterford*, 11 Mod 217, Lord Holt himself ordered an Appeal to be brought where it appeared that the acquittal upon the Indictment was against evidence. In the present case therefore much will I apprehend, depend upon the representations of the Judge who tried the cause whether he was satisfied with the verdict. It would be very important if some of the Magistrates and neighbouring gentlemen would concur in a written representation to the Judge stating their feelings as to the necessity for a reinvestigation of the circumstances of the Case.

(Sgd.) J. Chitty.

Temple, 23 Sep., 1817.

APPENDIX II.

Correspondence regarding Omar Hall

Lambeth Terrace,
Monday, 3rd Nov, 1817.

Sir,

A prisoner of the Name of Omar Hall, now on board the *Justitia* Hulk at Woolwich, having expressed a desire through the Surgeon of that Ship, of communicating to me some circumstances connected with the Case of Abraham Thornton, who was some short time since tried at Warwick, for the Murder of Mary Ashford and acquitted:—I yesterday went on board the *Justitia*, and saw the Prisoner, Omar Hall, who delivered to me and signed in my presence, the accompanying Written Statement and although the greater part of what he has stated appears to have been conversation, between himself and Thornton, when together in Warwick Gaol; yet in a case of such Atrocity, I beg leave to submit for your consideration whether it would not be proper to transmit the same, or a copy thereof, to William Bedford, Esq, an active Magistrate at Birmingham, whom I understand from the Keeper of Warwick Gaol, (now in London) is taking steps for Prosecuting an Appeal against the Acquittal of Thornton, and which I understand will be brought forward in the present Term in the Court of Kings Bench.

I have the Honor to be,
Sir, Your most obedient
humble servant,
John H. T. Capper.

The Right Honble
T. H. Addington,
&c, &c, &c.

Whitehall,
3rd Nov., 1817.

Sir,

I am directed by Lord Sidmonth to transmit to you the within letter from the Inspector of Convict Hulks inclosing a

statement made by a convict, named Omar Hall, relative to the Case of Abraham Thornton who was recently tried for the Murder of Mary Ashfield & acquitted but against whom it appears you are now taking steps for prosecuting an appeal.

I have the honor to be,
Sir,
Your most obedient
humble servant,
J. H. ADDINGTON.

Wm. Bedford, Esq,
Birmingham.

Copy of letter from Tatnall.

W Bedford, Esq — Coventry, Nov. 4, 1817.

Sir,

I left Town last night previous to which I had been at the Secretary of States Off: respecting Thornton. In all probability you will receive a letter by this day's post, the proceedings were yesterday laid before Lord Sidmouth upon this mysterious affair. I was desired by Mr Capper of the Secretary of States Office to give you the earliest inform^{m} that you might be in the way, and to say that they wish to render you every assistance in their power.

Am Sir,
Your obd. Servt.,
HEN. T. TATNALL.

To Lord Sidmonth.

My Lord,

I happened to be in Birm^{m} when I recd. your Lordship's Communication respg. Abraham Thornton, with the Statement made by Omar Hall of the Conversations that pass'd between him and Thornton in Warwick Goal tho' it appears extraordinary and indeed suspicious that he sho^{d} not have given this inform^{m} sooner, yet I am strongly induced to believe that what he has stated so far as respects Dale is true, being firmly persuaded that he grossly perjur'd himself in a very important part of the evidence on the Trial of Thornton on which Mr. Justice Holroyd laid great

stress in his Charge to the Jury, and it in a great measure led to his acquittal. In consequence of this gross misconduct, I requested a full attendance of my Bro[r] Mag[s] at the Police Office on the Monday after the Assizes, and after a minute investigation of the facts he was immed[y] dismiss'd from the police office with great disgrace.

My nephew is now in Town for the purpose of prosecuting the Writ of Appeal ag[t] Thornton and will have the honor of waiting upon your Lordship to inform you of the material facts of this unhappy case, which has excited a greater degree of interest (I may say) throughout the Kingdom, than any I ever heard of.

I shall be much obliged to your Lordship if you will allow my nephew to have an interview with Omar Hall. I have shortly ment[d] to him the crime for which he was transported & sho[d] he be instrumental in giving inform[m] to satisfy the object of public justice in bringing Thornton to Trial, I have no doubt but your Lordship will procure him a free Pardon to enable him to give his evidence.

I have the honor to be
My Lord, Your Lordship's mo[t] ob[t] Servt.
Wm. Bedford.

Birches Green, Novr. 4, 1817.

Dr. John,

I happened very fortunately to be in Birm[m] today when the Letters and Inclosures from the Secretary of State's office arrived, conveying very important infornation ag[t] Thornton, Copies of which you will receive herewith. You will of course immediately consult Mr Chitty upon it, and then go to the Secretary of State's Office, through whom you may be able to have access to Omar Hall. This unfortunate Man was some years ago a Banker (as I have been told) in the County of Stafford, but became involved by misfortunes and ruined. The Crime of which he was convicted was Fowl stealing and I believe his first offence, tho' it was attended with some aggravated circumstances, which induced the Judge who tried him to transport him.

I have no reason to doubt the truth of what he has stated, because I was so fully satisfied that Dale perjured himself on the

Abraham Thornton.

Trial of Thornton that I caused him immediately to be dismissed from the situation he held under the Birm^{m} Police.

If it should be found necessary to produce Hall as a Witness, I have every reason to hope that Hall may receive a free pardon so that he may be admitted a witness to prove the facts he has stated.

I am yr very affectly ,

Brm., Nov 4, 1817. Wm Bedford

APPENDIX III.

Letter from Mr. J. Y. Bedford to Mr. Yates

Ashford v *Thornton.*

Dear Sir,

We had a second consultation last night on this case and I am sorry to say difficulties have been started likely to occasion much trouble and perhaps ultimate defeat. It seems the Appellee has the option of waging Battle and of challenging the Appellor in single combat which if not accepted by the Appellor the suit is lost and, if accepted, and the Appellee can hold out from sun rise to sun set, then he wins the contest and claims his discharge, otherwise his election subjects him not only to a good threshing but also the pain of death into the bargain. It is rumoured here that is the plea intended to be set up by the Def. and unless we can devise any means by argument to induce the Court not to allow it, I am very apprehensive our poor little Knight will never be able to contend the Battle with his brutish opponent. Another consultation is consequently fixed for *Thursday* night that authorities may be searched and the question duly considered, before Monday. I am therefore prevented coming down as I intended & now I have little hope of reaching home before the end of term. Independent of the difficulties of the case I can evidently see the lawyers are well disposed to make it answer their purpose & if we can bring the matter, if at all, to an issue at the latter end of this term I shall think myself in high luck.

Lillingston & Hilday's Trus.

This parcel is found and all is right. Mr Butter promises to answer the Case in a day or two.

Yours truly,

St. James's Square,
11th Nov., 1817.

John Yeend Bedford.

Let me know if anything has transpired on the point I have alluded to in the County.

Tell my uncle I will write to him to-morrow.

I have seen Omar Hall and have obtained further material information from him, but I have thought it right to investigate the possibility of his having made up this story—which the perusal of papers and pamphlets might have enabled him to do before I communicate further with Mr. Capper on the subject who is ready and anxious to afford me every assistance in his power.

APPENDIX IV.

Statement by John Grant.

John Grant says he is Head Turnkey at Warwick Gaol That during the first term Thornton was in their custody he perfectly remembers seeing Dale, the late Constable of Birm^{m} at the window in the Turnkey's room facing the Felons' Court yard, that Dale was leaning against the bars of the window which was open, that He walked up to the window and heaved up the green blind belonging to it and then saw Thornton walking away from it, towards the Hall-room in the Court. He then put down the blind and Dale pulled to the window. Dale and Witness then entered into conversation and left the room together. He had often seen Thornton walking in the Court Yard with Homer Hall whom Thornton seemed to find upon as his principal companion, and he also often walked with Bradney, another convict. That when Thornton first came into the prison Witness put him to sleep in the same cell with Homer Hall who was there before him. That Dale being a Constable he used to take the liberty of going into the Turnkey's room when he chose, but it was not a room in which strangers are allowed to enter, because it communicated with the Felons' Yard.

Warwick, 14th Jany, 1818. John Grant.

Letter by Joseph Webster to John Yeend Bedford, Esq.

Penns, Sunday Morning,
Octr. 26th, 1817.

My Dear Sir,

I forget whether I mentioned to you that the statement of the Keeper that he left C. Bromwich Hall at a quarter before five is disproved by Mr. Rotton's maid servants. (Elizath Ray is one)— They say that in consequence of its being washing day the keeper lent them his watch to rise by; that they were to call him early; they called him a quarter before five—he blamed

them for doing it so late and they say that the clock must have struck five before he could possibly have left the Hall —Ray is the sister in law of the witness Bird

Believe me to be,
faithfully yours,
JOSEPH WEBSTER.

FRESH EVIDENCE BY JOHN COLLINGWOOD.

John Collingwood, Apprentice to Mr Barlow, Cabinetmaker in Birmingham, says, that on Friday the 30th May last he was at Mr Webster's House at Penn's Mill being one of the days on which the Inquest on the body of Mary Ashford was held. That before the Inquest sat he went into the Room where Thornton was and stood immediately behind him. Dale, the constable, sat exactly opposite to him about a yard from him—at this time Mr Saddler, the Attorney, came into the room and whispered to Thornton in the hearing of Wit[s] "Am I to do what I can for you" and Thornton answered "You have seen my Father?" Saddler said "Yes—be sure and hold fast." That Mr Saddler then left the room and in about two minutes after Dale and Thornton put their heads together and Thornton whispered to Dale in witness' hearing "Saddler says I must hold fast and by God it won't do to own to it." Dale made no immediate answer, but in about 5 minutes after whispered to Thornton and Thornton to Dale but what they said wit[s] could not then hear.

(Sgd.) JOHN COLLINGWOOD

APPENDIX V.

Memorandum as to the taking of Thornton.

Thursday, Octr. 9th, 1817.

John Hackney went over to Castle Bromwich with Thomas Martin and Jonathan Baker, two of his followers. They left Birm^{m} abt 7 o'clock in the evg. and arrived at Castle Bromwhich at 8, or a few minutes after. Went to Barton's Public Ho: and after making necessary enquiries such as would not lead to suspicion, took a man from thence who pointed out Thornton's house. Planted the men about the Prems. and Hackney went by himself to the door of the House and knocked. The Door was opened by the Servant Girl. H: asked for Mr Thornton. The girl, supposing probably that he meant the old man, said he was gone to bed and asked him to walk in and speak to the mistress. H: went into the Kitchen where he saw *young Thornton* sitting with his mother. A second man was in the kitchen also. H: said "How do you do Mr Thornton." Thornton said he supposed he meant his Father. H: said he sho^{d} be glad to speak to him, and young Thornton got up and came out of the kitchen with H: and went with him into the little Parlour where H: told him what he had got against him and that he must take him off. Thornton asked him to read the Warrant which H: did. T. said 2 Gent had been with him that day to inform him that Wm. Ashford was called up on Tuesday evg. at 12 o'clock to go to London upon that Bus^{s} and advised him to be off but he told them No! he wouldn't, he would stay and see it out. Said he *did not think they could have done it so soon.* H: put no questions to Thornton. H: returned with T. into the kitchen and Martin & Baker came in to them. The Mo^{r} threw up her arms and exclaimed, "That cruel Mr Bedford! What does he want with him! Isn't he satisfied Now? We must thank him for all this." Thornton said he supposed they wanted his life and then they wo^{d} be satisfied. Told his mo^{r} to make herself easy for he had made up his mind. Then handcuffed him and bro^{t} him to the Bradford Arms Inn, did not go into the Ho: T. wanted to call upon sev^{l} friends as

he coming from home to C.B, but it was not allowed. Immedy. brot him off to Birm[m] and did not stay anywhere on the road.

Denied having done what he was charged with, but *believed if he had not have gone with her it would not have happened*—and this was sevl times repeated. Admitted having connexion with her but she was as willing as he was.

Taken to Warwick by Hackney and Martin.

Dale called to see Thornton just before he went off but was refused admittance.

On the Road to Warwick Hackney said to Thornton. It was a pity but you had gone off to America as soon as the Trial was over. He replied, if he had known as much as he did then he would have gone.

ACCOUNT BY THE TIPSTAFFS.

Messrs. Knight & Jones

To the Tipstaffs Ks Bh

The King agt Abraham Thornton, 1817 — The Prisoner being brought by the Keeper of Warwick Gaol.

6th	Taking Defendt to the Kings Bench Prison and Coach - - - -	£1.	1	0
17th Nov. 6	Bringing Defendant into Court taking back and Coach, &c. - - -	1.	1	0
1818				
Janry. 24th	Bringing Deft. into Court and taking back and Coach	1.	1	0
29th	Bringing into Court and taking back and Coach -	1.	1	0
Feby. 6th	Bringing into Court taking back and Coach - -	1.	1	0
	Carry forward, - - -	£5.	5	0

Appendix V.

	Brought forward, - -	£5.	5	0
April 16th	Bringing into Court taking back and Coach - -	1.	1	0
20th	Bringing into Court when Deft. discharged Assistants	1.	1	0
		£8.	8	0

Account of John Hackney, Sheriff's Officer.

Ashford v. *Thornton.*

Sir,

On the other side I beg leave to hand you an account of the Money which I have paid herein and as for my men's time and my own I shall leave entirely to you & am

Sir,

Your most obt Servt.,

John Hackney,

J. Y. Bedford, Esq.,
New Street,
Birmingham

John Yeend Bedford, Esquire.

1817 To John Hackney.

Dr

October 9th	Instructions to take Abraham Thornton of Castlebromwich and Journey over there with two Men for that purpose when we took him and brought him to Birmingham and men attending him all night - - - - - - - -			
	Paid expenses of Men and Horses at Castlebromwich - - - - -	£0	7	8
	Paid for Horse and Gigg to Do. - -	0	10	6
	Paid for Horse hire to Do. - - -	0	5	0
	Carry forward, - -	£1	3	2

		£	s	d
	Brought forward, - - -	£1	3	2
10th	Journey to Warwick self and Man conveying Thornton to Prison - - -			
	Paid expences at Warwick - - -	0	7	3
	Paid Mr. Powell for chaise hire to Warwick waiting and returning, - -	2	5	0
	Paid Turnpikes - - - - -	0	1	10
	Paid Driver - - - - -	0	8	0
	Paid expences of Horses at Warwick driver &c on the road going and returning - - - - - -	0	3	9
Novr 2nd	Man and Horse to Warwick with Habeas to remove Thornton to London and leaving same with Undersheriff -			
	Paid for Horse hire and Expences 20 Miles and back - - - - -	0	13	6
		£5	2	6
1818				
June 18th	By Cash Received of Mr Bedford on account of the within Bill - - -	£5	0	0

"John Hackney."

LETTER FROM J. HACKNEY WITH INFORMATION OF THORNTON BEING TAKEN INTO CUSTODY.

Sir,

It is with great satisfaction that I now inform you that I took Thornton last night brought him to my own house in Bell street have had 2 of my men locked up with him all night and am now going to take him to Warwick.

I am, Sir,
Your most obt. servt.,
JOHN HACKNEY,
Bell St. Birm.
10th Oct., 1817 (Friday).

An. Bedford,
Sol.
New Street,
Birmingham.

Appendix V.

Ashford v. *Thornton.*

H. Y. Tatnall's Account, paid by the County.

Mr. Bedford Dr. to Hen. Y. Tatnall for the Conveyance of Abraham Thornton to London, 5th Novr., 1817.

Paid a Messenger to Mr Bedford of Birm^{m} -	£0.	15.	0
Pd a mans time and expences to take the horse back to Birm^{m} - - - - - - -	0.	15.	0
Pd Post Chaises to London as per order with paying Post Boys Turnpikes &c - - -	8.	9.	7
pd a Guard with horse to Daventry in the night - - - - - - - - -	1.	0.	0
pd Hackney Coaches in London - - -	0.	8.	0
pd a Guards time and expences to London & Back - - - - - - - - - -	3.	10.	0
pd an assistant Guard in London and for siting	1.	0.	0
up self time & Expences - - - -	4.	10.	0
pd Coach hire back to War^{k} with Coachman & guard for self and guard - - - -	3.	0.	0
	£23.	7.	7

APPENDIX VI.

Draft Affidavit on which to ground an Application for a Writ of Habeas Corpus

In the King's Bench

William Ashford against Abraham Thornton.	Upon an Appeal of Murder.

Robert Crisp, of Erdington in the Parish of Ashton near Birm^{m}., in the Co. of Warwick, Wheelwright—

maketh Oath and saith That the Appellant William Ashford late of the Parish of Hints in the Co. of Stafford, but now of Hill in the Parish of Sutton Coldfield in the Co. of Warwick, labourer, is the eldest brother and Heir at Law of Mary Ashford late of Langley in the Parish of Sutton Coldfield in the Co. of Warwick, Spinster, deceased.

That this Def: hath been informed and verily believes that he the said William Ashford hath issued a Writ of Appeal against the said Abraham Thornton to answer the death of the said Mary Ashford. Upon which said Writ the said Abraham Thornton hath as this Def: hath also been informed and verily believes, been arrested, under a warrant upon the sd. writ granted by the Sheriff of the County of Warwick and is now in the gaol of the said County of Warwick at Warwick in the sd. County. And further that he the said William Ashford is desirous of having the said Abraham Thornton brought into his Majesty's Court of K.B. at Westminster on the first day of next Term in order

to Count against him, the sd. Abraham Thornton, on the said Appeal.

(Sgd.) ROBERT CRISP.

Sworn at Birmingham in
the County of Warwick the 28th
day of October, 1817—
Before me
(Sgd.) W. WHATELEY.

Ashford v. *Thornton*

BOND FOR APPELLANT APPEARING AND PROSECUTING APPEAL (8 October 1817).

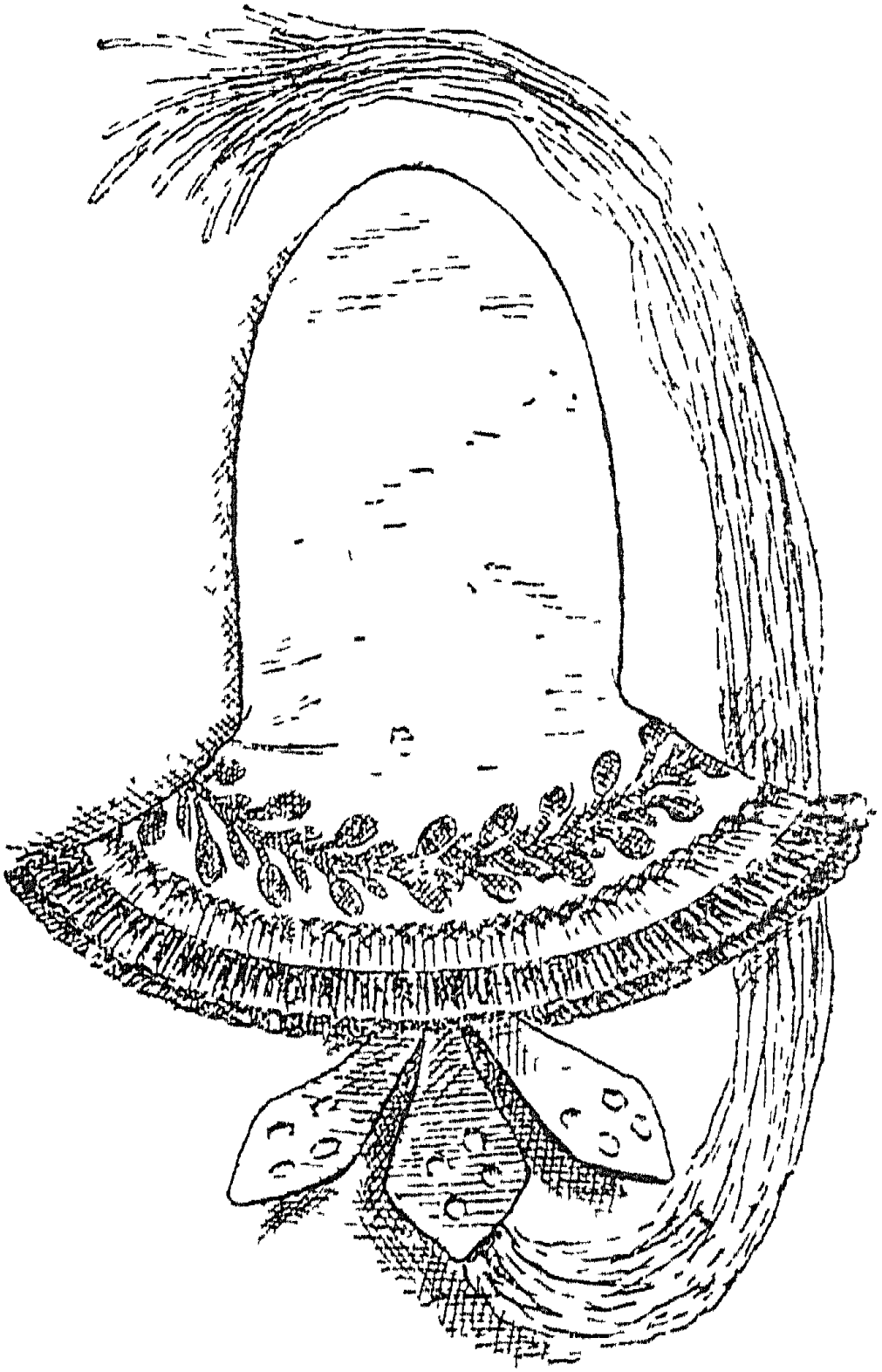
Know all Men by these presents That We, William Ashford of the Parish of Hints in the County of Stafford, Laborer, John Coleman of Langley Heath in the Parish of Sutton Coldfield in the County of Warwick, Yeoman, and Charles Coleman of Erdington in the Parish of Aston near Birmingham in the said County of Warwick, Laborer, are held and firmly bound to The Honorable Henry Verney Sheriff of the said County of Warwick in the Sum of One hundred Pounds of lawful Money of Great Britain to be paid to the said Sheriff or his certain Attorney, Executors administrators or Assigns, For which payment will and truly to be made we bind ourselves and each of us for himself in the whole our and every of our Heirs Executors and Administrators firmly by these presents Sealed with our Seals Dated the eighth day of October. In the fifty seventh year of the Reign of our Sovereign Lord George the third by the grace of God of the United Kingdom of Great Britain and Ireland King Defender of the Faith And in the year of our Lord One thousand eight hundred and seventeen.

The Condition of this Obligation is such that if the above bounden William Ashford, who was the eldest brother and is the Heir of the late Mary Ashford, Spinster deceased, do personally appear before our Sovereign Lord the King on the Morrow of All Souls, wheresoever our said Lord the King shall

then be in England, to prosecute his Writ of Appeal and Suit in that behalf against Abraham Thornton of Castle Bromwich in the parish of Aston near Birmingham in the County of Warwick, aforesaid Laborer, of the death of the said Mary Ashford late of Langley in the parish of Sutton Coldfield in the said County of Warwick, Spinster, whereof he appealeth him and do prosecute such his said Suit. Then this obligation to be void otherwise to remain in full force.

Signed Sealed and Delivered
in the presence of
JOHN YEEND BEDFORD.

The mark of
×
WILLIAM ASHFORD.
JOHN COLEMAN
CHAS. COLEMAN.



Abraham Thornton's Gage of Battel

APPENDIX VII.

APPEAL OF MURDER.*

Ashford v. *Thornton.*

CLARKE, on the first day of last Michaelmas term, moved that the sheriff of the county of Warwick be called in to make a return to a writ of Habeas Corpus.

WILLIAM ASHFORD was called, and answering to his name took his place.

The sheriff appeared with Abraham Thornton his prisoner, and first delivered in the writ of Habeas Corpus and the return thereto; which were read by Mr. Barlow. The writ was in the usual form, and returnable on the morrow of All Souls.

The return stated, that before the said writ came to the hands of the sheriff, viz., on the 10th October in the 57th year of His Majesty's reign, Abraham Thornton had been committed to his custody by virtue of His Majesty's writ of appeal. The writ of appeal and the return thereto were annexed to this return made to the writ of Habeas Corpus. They were as follows:—

"George the Third by the grace of God, &c. To the Sheriff of Warwickshire greeting. If William Ashford of the parish of Hints in the county of Stafford, labourer, who was the eldest brother, and is the heir of Mary Ashford, late of Langley in the parish of Sutton Coldfield in your county, spinster deceased, shall give you security to prosecute his suit,

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*From Barnewell & Alderson Reports, vol. i., 405-461.

In an appeal of death appellee wages his battle. Held that the counter plea to oust him of this mode of trial must disclose such violent and strong presumptions of guilt as to leave no possible doubt in the minds of the Court.

And therefore a counter plea which only stated strong circumstances of suspicion was held to be insufficient. Held also that the appellee may reply fresh matter tending to show his innocence, as for instance an alibi, and his former acquittal of the same offence on an indictment. But *quaere* where the counter plea is *per se* insufficient, or where the replication is a good answer to it, whether the Court should give judgment that the appellee be allowed his wager of battle, or that he go without day.

then we command you that you attach Abraham Thornton late of Castle Bromwich in the parish of Aston near Birmingham in your county, labourer, by his body, according to the law and custom of England, so that we may have him before us on the morrow of All Souls, wheresoever we shall then be in England, to answer to the aforesaid William Ashford of the death of the aforesaid Mary, heretofore his sister, and whose heir he is, whereof he appealeth him, and have you there this writ. Witness ourself at Westminster the 1st day of October in the 57th year of our reign."

The SHERIFF OF WARWICK returned as follows:—

"By virtue of this writ to me directed (the within named William Ashford having found and given sufficient pledges to prosecute his within writ of appeal and his suit in that behalf, and which said pledges are John Coleman of Langley Heath, in the parish of Sutton Coldfield in my bailiwick, yeoman, and Charles Coleman of Erdington in the parish of Aston near Birmingham in my said bailiwick, labourer,) I have attached the within named Abraham Thornton whose body I have in his Majesty's gaol in and for the said county of Warwick under my custody, to answer the within named William Ashford of the death of the within named Mary Ashford whereof he appealeth him as within mentioned"

CLARKE then moved that the appellee be committed to the custody of the marshal of the marshalsea.—And he was so committed.

CLARKE then moved that the appellant might count against the appellee, and that the appellee be placed at the bar for that purpose. On which, Thornton, who had before stood on the floor of the Court, was placed at the bar, and the appellant then handed his count to Mr. Le Blanc, the proceedings being now on the civil side of the Court. It was then read by Mr. Le Blanc:—

"In the King's Bench Michaelmas term, 58 G. 3, Abraham Thornton was attached to answer W. Ashford, who was the eldest brother, and is the heir of Mary Ashford deceased, of the death of the said Mary Ashford, and thereupon the said W. Ashford in his own proper person appealeth Abraham Thornton, &c. For that he the said Abraham Thornton not having the

fear of God before his eyes, but being moved and seduced by the instigation of the Devil, on the 27th day of May, in the 57th year of the reign of our sovereign Lord George the Third by the grace of God, &c., with force of arms at the parish of Sutton Coldfield in the county of Warwick, in and upon the said Mary Ashford spinster, in the peace of God and our said lord the King, then and there being feloniously, wilfully, and of his malice aforethought, did make an assault, and that the said Abraham Thornton then and there feloniously and wilfully, and of his malice aforethought, did take the said Mary Ashford into both his hands, and did then and there feloniously, wilfully, violently, and of his malice aforethought, cast, throw, and push the said Mary Ashford into a certain pit of water, wherein there was then a great quantity of water, situated in the parish of Sutton Coldfield aforesaid in the county aforesaid, by means of which said casting, throwing, and pushing of the said Mary Ashford into the pit of water aforesaid by the said A. Thornton in form aforesaid, she, the said M. Ashford in the pit of water aforesaid with the water aforesaid, was then and there choaked, suffocated, and drowned, of which said choaking, suffocating, and drowning she, the said M. Ashford, then and there instantly died. And so the said A. Thornton, her the said Mary Ashford in manner and form aforesaid feloniously and wilfully, and of his malice aforethought, did kill and murder against the peace of our said Lord the King his Crown and dignity. And if the said A. Thornton will deny the felony and murder aforesaid, as aforesaid charged upon him, then the said W. Ashford, who was the eldest brother and is the heir of the said Mary Ashford deceased, is ready to prove the said felony and murder against him the said A. Thornton according as the Court here shall consider thereof, and hath found pledges to prosecute his appeal.

(Witness) WILLIAM ASHFORD,
his × mark
CLARKE."

CLARKE then moved that the appellee be required to plead.

READER who, with Reynolds and Tindal, appeared for the appellee, applied for time The Court by consent granted time till Monday, Nov. 16.

READER then applied for copies of the original writ, the return thereto, and the count, which the Court refused, but desired Mr. Barlow to read over the two former, and Mr. Le Blanc to read over the latter, slowly in Court, which was done.

Nov. 16. The appellee being brought into Court and placed at the bar, and the appellant being also in Court, the count was again read over to him, and he was called upon to plead. He pleaded as follows: "NOT GUILTY; AND I AM READY TO DEFEND THE SAME BY MY BODY." And thereupon taking his glove off, he threw it upon the floor of the Court.

CLARKE then applied to the Court for time.

Lord ELLENBOROUGH—Do you apply for time generally, or for time to counterplead?

CLARKE stated that he applied for time to counterplead.

The Court then gave time till Saturday, Nov. 21, to counterplead; Reader for the appellee consenting to it.

Nov. 21. The parties appearing, the appellant delivered in his counterplea, which he verified by his affidavit, and the same was read by Mr. Le Blanc.

"In the King's Bench.—Saturday next after eight days of St. Martin, in Michaelmas term, in the 58th year of King Geo. 3. And the said William Ashford saith, that the said Abraham Thornton ought not to be admitted to wage battle in this appeal with him the said W.A., because he saith, that before and at the time of the issuing of the writ of appeal of him the said W.A. in this suit, there were, and still are, the violent and strong presumptions, and proofs following, that he the said A.T. was and is guilty of the felony and murder aforesaid, in the said count so charged and alleged against him the said A.T. as aforesaid, to wit, at, &c. (that is to say) that on the 27th day of May, in the 57th G. 3, about the hour of seven in the morning of the same day, the body of the said Mary Ashford in the said writ of appeal and count mentioned, was

found dead in a pit of water situated in the parish of Sutton Coldfield aforesaid, in the county of Warwick aforesaid, and that the said body of the said Mary Ashford was then and there taken out of the said pit and examined in the presence of divers credible witnesses in this behalf

And the said W A further saith, that upon and from the said examination of the said body of the said Mary Ashford it then and there appeared and was manifest to the said witnesses, that she the said Mary Ashford had been and was recently alive, and that she the said Mary Ashford had come to her death by drowning, as in and by the said count is charged and alleged; and that recently before the death of her, the said Mary Ashford, some man had forcibly had carnal knowledge of the body of her the said Mary Ashford, and that up to the time of such carnal knowledge, so had as aforesaid, she the said Mary Ashford had been and was a virgin And that upon the said examination there also then and there appeared and were manifest upon each of the arms of her, the said Mary Ashford, between the shoulder and the elbow of each of the said arms, the mark and impression of a human hand, the said marks and impressions then and there denoting and indicating that each of the arms of her the said Mary Ashford had been recently grasped and held with violence.

"And the said W A. further saith, that on the said examination of the body of the said Mary Ashford there then and there appeared and were marks and stains of blood upon and about the thighs and private parts of the body of her the said Mary Ashford, and also upon the clothes and dress in which the body of the said Mary Ashford was clothed when the same was so taken out of the said pit as aforesaid; and that the front part of the shift wherein the body of the said Mary Ashford was then clothed was then and there rent and torn, to wit, at, &c.

"And the said W.A. further saith, that on the said 27th day of May, in the 57th year aforesaid, in the parish of Sutton Coldfield aforesaid, in the said county of Warwick, about the hour last aforesaid, upon certain grass then and there growing about the distance of forty yards from the said

pit there was the mark and impression of a human figure, from which said mark and impression it then and there appeared and was manifest that a human body had been recently lying there with the arms and legs thereof extended, and that there was then and there blood upon the said grass near to the centre of the said mark and impression of such figure as aforesaid, and also a large quantity of blood upon the ground near to the lower extremity of the said mark and impression of the said figure; and that between the places where the said mark and impression of the said figure was and the said pit, divers other marks, spots, and vestiges of blood then and there appeared and were manifest upon and across a certain footpath there, and upon certain clover grass then and there growing, and being on one side of the said footpath and about a foot and a half from the side of the said footpath in a direction leading from the place where the said mark and impression of the said human figure was, towards and near to the said pit, and that the said last-mentioned marks, spots, and vestiges of blood upon the said clover grass then and there growing by the side of the said footpath as aforesaid were near enough to the said footpath to have fallen from a human body carried in the arms of a person passing along the said footpath from the place where the said mark and impression of the said human figure was, towards the said pit, and that there was not at the time when the said body of the said Mary Ashford was so found in the said pit, as aforesaid, any impression, mark or vestige on the said clover grass (whereon the said last-mentioned marks, spots, and vestiges of blood were by the side of the said footpath as aforesaid) of any footstep or of any person having walked or passed on or over the said clover grass there, and the said clover grass there was then covered with dew, and the same dew was not disturbed or brushed away otherwise than by the said blood so being thereon as aforesaid.

"And the said W.A. further saith that in the evening of the 26th May in the 57th year aforesaid, the said Mary Ashford was at a dance at the house of one Daniel Clarke in the parish of Cudworth in the said county of Warwick, and that the said A.T. was then there also; and that while the said Mary Ashford who was at the

said house of the said D. Clarke (to wit) on, &c. at, &c., he, the said Abraham Thornton, said of, and concerning, the said Mary Ashford in the presence and hearing of one Joseph Cooke, then and there and still being a credible witness, but not in the hearing of the said Mary Ashford, in gross and obscene language to the effect following, (that is to say,) that he the said A.T. had had carnal knowledge of the sister of the said M. Ashford three times, and that he would have carnal knowledge of her the said M. Ashford or die by it

"And the said W.A. further saith that the said M. Ashford and the said A.T. danced together at the house of the said D. Clarke on the evening of the said 26th day of May, and that about 12 o'clock at night of the same 26th day of May, at, &c., the said Mary Ashford and A.T. left the said house of the said Daniel Clarke and walked together towards Erdington, in the parish of Aston, near Birmingham, in the said county of Warwick.

"And the said W A further saith that about 3 o'clock in the morning of the 27th day of May, the said Mary Ashford and A.T. were seen talking together at a certain stile near to a certain lane called Bell Lane, leading towards Erdington aforesaid, to wit, at, &c.

"And the said W.A. further saith that about 4 o'clock of the same morning of the said 27th day of May in the 57th year aforesaid, the said Mary Ashford went to the house of a certain person, (to wit) one Mary Butler in Erdington aforesaid, at which last-mentioned house she, the said Mary Ashford, had on the then preceding day left some wearing apparel, and that the said M Ashford then and there remained in the said last-mentioned house about a quarter of an hour, and that during that time she, the said M. Ashford, then and there appeared in good health and in perfect composure of mind.

"And the said W.A. further saith that the said Mary Ashford at the end of the said last-mentioned time, to wit, on, &c., left the said last-mentioned house, to wit, at, &c.

"And the said W.A. further saith that very soon, (that is to say,) within the space of a quarter of an hour after the said Mary Ashford so left the said last-mentioned house as aforesaid, she the said Mary Ashford was seen (to wit) at, &c. walking alone in a direction leading from Erdington

aforesaid towards Langley in the said parish of Sutton Coldfield in the said county of Warwick, which said Langley was then the place of residence of her, the said Mary Ashford.

"And the said W A. further saith that before and on the said 27th day of May in the 57th year aforesaid there was a certain public footway leading out of Bell Lane aforesaid across certain closes towards Langley aforesaid, to wit, at, &c. and that one of the said closes a short time before the said 27th day of May aforesaid in the 57th year aforesaid had been harrowed, and then was newly harrowed, and which said last-mentioned close was and is next adjoining to the close in which was and is situate the said pit wherein the body of the said Mary Ashford was found as aforesaid, to wit, at, &c

"And the said W.A. further saith that on the 27th day of May in the morning of that day, to wit, at, &c. there appeared and was manifest in the said harrowed field in and upon the said newly harrowed ground there, the recent marks and impressions of the footsteps of the said A T. and of the footsteps of the said Mary Ashford, the same having been then and there carefully examined and compared by divers credible witnesses, with the shoes worn by the said A T. and the said Mary Ashford respectively on the morning of the same 27th day of May and that it then and there appeared and was manifest from the said marks and impressions of the said footsteps to the said credible witnesses who then and there examined and compared them as aforesaid, that she, the said Mary Ashford, had run and endeavoured to escape from him the said A.T., and that he, the said A.T. had run after and pursued her, the said Mary Ashford, and had overtaken her in the said harrowed field, and it also then and there appeared and was manifest to the same credible witnesses from the said marks and impressions of the said footsteps, that from that part of the said harrowed field, where he the said A.T. had so overtaken the said Mary Ashford as aforesaid, they, the said A.T. and Mary Ashford had walked together in a direction leading towards the said pit, where the body of the said Mary Ashford was so found, as aforesaid, and also towards the spot where the said mark

and impression of a human figure appeared on the grass as aforesaid until the said marks and impressions of the said footsteps approached and came within the distance of about forty yards from the said pit at which said distance from the pit the said marks and impressions of the said footsteps were lost and could no longer be traced by reason of the hardness of the ground there.

"And the said W.A further says that there also then and there appeared and were manifest in the said harrowed field in and upon the said harrowed ground there, the recent marks and impressions of the footsteps of the said A.T., from which said last-mentioned marks and impressions it then and there appeared and was manifest to the same last-mentioned credible witnesses who then and there carefully examined and compared the said last-mentioned footsteps with the shoes so worn by the said A.T. as aforesaid, that he, the said A.T. had then recently run by himself along the said harrowed field in a direction leading from the said pit, to wit, at, &c.

"And the said W A further says that no other marks or impressions of any footsteps of her the said Mary Ashford were then and there found or visible except as aforesaid.

"And the said W.A. further says that on the morning of the said 27th day of May in the 57th year aforesaid, to wit, at, &c. there was visible and manifest on certain grass then and there growing very near to the edge of the bank of the said pit, and near to that part of the said pit, in which the body of the said Mary Ashford was found drowned as aforesaid, the mark and impression of the shoe of a man's left foot.

"And the said W.A. saith that on the same morning the said A.T. had on and wore shoes made and fitted for his right and left feet respectively, to wit, at, &c.

"And the said W.A. further saith that on the morning of the said 27th day of May in the 57th year aforesaid, at, &c. the said A.T. was searched and stripped in the presence of divers credible witnesses, and that the shirt of the said A.T. and the inside of the breeches of the said A.T., and which said shirt and breeches he, the said A.T., then and there had on and wore were then and there marked and stained with blood,

and that on the same being discovered to be so marked and stained with blood the said A.T then and there declared that on the then preceding night he had carnal knowledge of the body of the said Mary Ashford by her own consent.

"And this he, the said W A., is ready to verify when, where, and in such manner as the Court here shall direct and award: wherefore he prays judgment; and that the said A.T. may not be admitted to wage battle in this appeal against him the said W A."

The Court, by consent, gave time to reply till the second day of Hilary term, on which day, the appellee put in his replication, which he also verified by his affidavit.

Saturday next after eight days of Saint Hilary, in Hilary term in the 58th year of the reign of King George the Third.

Replication to Counter-plea.

"And the said Abraham Thornton saith, that he the said A.T. notwithstanding any thing by the said William Ashford in the said counterplea alleged, ought to be admitted to wage battle in this appeal with him the said W.A because protesting that the said counterplea is insufficient, and that he the said A T. is not under any necessity or in anywise bound by the law of the land, to answer the same, nevertheless for replication to the said counterplea in this behalf, the said A.T. saith, that before and at the time of the issuing of the writ of appeal of him the said W.A. in this suit, there were, and still are the violent and strong presumptions and proofs following, that he the said A.T. was not and is not guilty of the felony and murder aforesaid, in the said writ of appeal and count charged and alleged against him, (that is to say) that at the time when the said Mary Ashford went to the house of the said Mary Butler in Erdington aforesaid in the morning of the said Tuesday the 27th day of May as in the counterplea of the said W.A. is above set forth, she the said M. Ashford went there alone, and unaccompanied by the said A.T.

Appendix VII.

"And the said A.T. further says, that the said Mary Ashford left the house of the said Mary Butler at about one quarter of an hour past four of the clock on the said morning, alone, and unaccompanied by the said A.T , and proceeded in a direction towards Langley aforesaid, to wit, at, &c.

"And the said A.T further says, that a short time after the said Mary Ashford had so left the house of the said Mary Butler, she was met at a short distance from the same, walking alone in a direction leading from Erdington aforesaid, towards Langley aforesaid, by one Joseph Dawson, who then and there saw her in Bell Lane in the said counterplea mentioned, and proceeding therein towards Langley aforesaid, he the said A T. not being in company with the said M. Ashford, nor anywhere within sight, to wit, at, &c

"And the said A.T further says, that within a short time afterwards, that is to say, within the space of a quarter of an hour from the time she so left the house of the said Mary Butler, the said Mary Ashford was seen by one Thomas Broadhurst crossing the turnpike road leading from London to Chester, in that part of the same which passes across the Bell Lane, and that the said Mary Ashford continued the course along the said lane, called Bell Lane, towards Langley aforesaid, she the said Mary Ashford then also being alone, and unaccompanied by the said A.T. to wit, at, &c.

"And the said A.T. further saith, that at the said several places when the said Mary Ashford was so as aforesaid seen by the said Joseph Dawson and the said Thomas Broadhurst, the said road was broad and straight for a considerable distance, and that he the said A.T. might then and there have been seen at a considerable distance if he had been proceeding in the same direction with the said Mary Ashford, to wit, at, &c.

"And the said A.T. further says, that on the morning of the said Thursday the 27th day of May at half past four and not later than 25 minutes before five o'clock of the said morning, he the said A.T. was seen by divers credible witnesses, that is to say, by one W. Jennings, one Martha Jennings, one Jane Heaton, and one John Holden, the younger, being all of them persons with whom he, the

said A T, had no previous connexion or any acquaintance, whilst he, the said A.T., was walking along a certain lane leading from Erdington aforesaid, to Castle Bromwich aforesaid, close to the farm house of one John Holden, the elder, which was the direct way from Erdington aforesaid, towards the house of the said A.T 's father, with whom he, the said A.T., resided, to wit, at, &c., and that the said A T. was then walking very slowly, leisurely, and composedly along the said lane, and did not appear to any of the said persons last mentioned, to be in any degree of confusion or disorder.

"And the said A T further saith, that when he had continued his course about a mile from the said farm house of the said John Holden, the elder, he was seen by one John Haydon still slowly walking in a certain foot-path in the same direction from Erdington aforesaid towards Castle Bromwich aforesaid, and that the time at which he was so seen by the said John Haydon, was about ten minutes before five o'clock of the same morning.

"And the said A.T says, that he was very well acquainted with the said John Haydon, and that he then and there stopped and conversed with the said John Haydon for the space of a quarter of an hour, after which he, the said A.T., parted from him and continued walking on towards the house of his, the said A.T.'s father, near Castle Bromwich aforesaid; and the said A.T. further saith that one John Woodcock saw him, the said A.T., and the said John Haydon so stopping and conversing together as last aforesaid, to wit, at, &c.

"And the said A.T further saith, that he, the said A T. was afterwards seen by one James White in Castle Bromwich aforesaid, at about 25 minutes past five of the clock of the same morning, when he the said A.T. was still walking slowly and leisurely in a direction towards his father's house, which was about half a mile from Castle Bromwich aforesaid, to wit, at, &c

"And the said A.T. further says, that the distance from the house of the said Mary Butler along the said lane called Bell Lane, and over and across the said harrowed field in the said counterplea men-

tioned to the pit of water wherein the body of the said Mary Ashford was found, is one mile two furlongs and thirty yards, and that the distance from the workhouse being the nearest point of the village of Erdington to the said farm house of the said John Holden, the elder, along the said lane and footpath leading from Erdington aforesaid to Castle Bromwich aforesaid, is one mile three furlongs and sixty-two yards, and that the distance from the said pit of water round by Erdington aforesaid to the said house of the said John Holden, the elder, is two miles and four furlongs at the least, to wit, at, &c.

"And the said A T further saith, that the most ready and accessible way from the said pit of water to the said farm of the said John Holden, the elder, and also the shortest way with the exception of the hereinafter next mentioned, and also the way which could be gone over in the shortest possible time, by any person travelling the same on foot, was and is the way following (that is to say) from the said pit of water across certain closes into a certain turnpike road, called the Chester road, at a part thereof near to the garden wall of one Mr. Hipkins, and so across the said road into, over, and across certain other inclosures into and along a certain lane leading by the house of Mr. Laugher, and so along a certain other lane unto the said farm house of the said John Holden, the elder, and that the distance of the said pit of water from the said last-mentioned farm house, measured in the direction of the said last-mentioned way, is not less than one mile seven furlongs and one hundred and seventy yards, to wit, at, &c.

"And the said A.T. further saith, that the distance from the said pit of water in a straight line to the said farm house of the said John Holden, the elder, is not less than one mile four furlongs and sixty yards, but the said A.T. saith that there is no footpath or other way in the direction last mentioned, except for the distance of about one hundred yards, being from the bridge across the said canal to the said farm house, and that from the intersections of the hedges and fences of the several enclosures lying between the said pit of water and the said bridge, and the difficulties of the ground, it would require a longer time to arrive at

the said farm house by the said last-mentioned course, than by taking the more circuitous and accessible course, secondly above pointed out, to wit, at, &c.

"And the said A.T. further saith, that the clock of the house of the said Mary Butler, by which the time of the departure of the said Mary Ashford from the said last-mentioned house is fixed and ascertained, was on the morning of the said 27th day of May, and before any alteration was made in the time marked by the said clock, carefully compared by one William* Webster, Esq., a person wholly unknown to the said A.T, and one of the witnesses called by the prosecutors upon the trial of the indictment hereinafter next mentioned, with the true time then kept at Birmingham, and that the clock at the farm house of the said John Holden, the elder, by which the time of the arrival of the said A.T. close to that farm house is ascertained, was also on the morning of the 28th day of May, and before any alteration was made in the time marked by the same, carefully compared by one William Twamley, a person wholly unconnected with the said A.T., with the same true time so kept at Birmingham as aforesaid, and that the several times hereinbefore stated, that is to say, the time of one quarter of an hour past four of the clock at which the said Mary Ashford left the house of the said Mary Butler, and the time of half an hour past four of the clock, or 25 minutes before five of the clock, at which the said A.T. was close to the farm house of the said John Holden, the elder, and also the said several other times hereinbefore mentioned, are all corrected and reduced to the same measure of time, that is to say, the true time so kept at Birmingham on that day, and are hereinbefore stated accordingly, to wit, at, &c.

"And the said A.T. further saith, that upon his arrival at his father's house, near Castle Bromwich aforesaid, on the morning of the said 27th day of May, he changed his hat and coat which he had worn during the preceding night, and no other part of his wearing apparel, but that he still had on and wore the same shirt and breeches, and the same stockings and shoes, which he had worn during the preceding night,

* Joseph.—Ed.

and he had on and wore the same respectively at the time he was apprehended upon the said charge of the said felony and murder, to wit, at, &c.

"And the said A T. further saith, that on such his apprehension, upon the charge of having been guilty of the said felony and murder of the said Mary Ashford as aforesaid, he was taken before one William Bedford, Esq., one of his Majesty's Justices of the Peace for the county of Warwick, before whom the several witnesses were examined in support of the said charge, and that he the said A.T. being also examined, did upon that occasion give in his examination, which was afterwards reduced into writing and signed by him, the said A.T., in which examination he, the said A T, gave an account of the several places at which he had been during the night of the 26th and the morning of the 27th of May, and the several times at which he had been at such places respectively, and described the several persons whom he met and saw during such night and morning.

"And the said A T further says, there is no fact stated by him, the said A T., upon such his examination as aforesaid, which hath been in any manner contradicted by any evidence which was then given or hath been subsequently given, but that on the contrary thereof many of the said facts, and all the material facts stated in the said examination, have since been fully confirmed and corroborated by various witnesses, as well as those called in support of the prosecution of the indictment hereinafter next mentioned as those called on the part of the said A.T. in his defence thereto, to wit, at, &c.

(The replication then proceeded to set out the record of acquittal of Abraham Thornton, on an indictment for the murder of Mary Ashford at the assizes for the county of Warwick, and averred that the said A.T and Mary Ashford in the writ of appeal and count mentioned, were the same persons as the said A.T. and Mary Ashford in the indictment mentioned. And also the identity of the supposed murder in both.) And that the several facts and circumstances, and the said presumptions and proofs in the said counterplea mentioned, and thereby supposed to be violent and strong presumptions and proofs that he, the said A.T., was and is guilty of the felony and murder aforesaid, in the said count alleged against him,

the said A T. as aforesaid, and also the said several facts and circumstances in this replication mentioned were in substance and effect proved upon oath before the Court and jury at the said trial of the said indictment of the said A.T. for the murder of the said Mary Ashford

(The replication then further proceeded to set out a similar acquittal on an indictment for a rape, with similar averments of identity. And concluded as follows) And so the said Abraham Thornton saith, that the several facts and circumstances in this replication set forth, afford stronger and more violent presumptions, and are stronger proofs that he, the said A T., is not guilty of the felony and murder whereof he is appealed as aforesaid, than the said presumptions and proofs in the said counterplea set forth, that he, the said A.T., is guilty of the felony and murder whereof he is so appealed as aforesaid. And this he, the said A.T., is ready to verify, wherefore he prays judgment, and that he may be admitted to wage battel in this appeal with him the said W. Ashford, &c."

To this there was a general demurrer and rejoinder therein.

Chitty in support of the demurrer—There are two objections to this replication. First, It is not competent for the appellee, in answer to a counterplea, to state circumstances affording a presumption of innocence. Secondly, the circumstances stated in this replication, are not, if admissible, sufficient to raise that presumption. Before, however, these questions are discussed, it will be necessary to shew that the counterplea is by itself sufficient, inasmuch as if that be not good, it is of no consequence to shew that the replication is no answer to it.

The right of appeal had its origin at the common law, and many exceptions having been allowed to abate it, the statute of Gloucester* was passed, which provided, that "if the appellor declare the deed, the year, the day, the hour, the time of the king, and the town where the deed was done, and with what weapon he was slain, the appeal shall stand in effect, and shall not be abated for default of fresh suit, if the party shall sue within the year and the day, after the

* 6 E. 3, c. 9.

deed done." Between the time of passing the above statute and the 3 H 7, c. 1., a practice had prevailed, not to put persons upon their trial by indictment at the suit of the king until the year and the day (the time limited for bringing the appeal) had expired, at which period, the witnesses who were to prove the fact were often dead and the matter forgotten. To remedy this inconvenience, the 3 H. 7, c. i. was passed, which ordained that indictments at the suit of the king should immediately be proceeded upon, and before appeal brought; and further provided, that the plea of *autrefois acquit*, or *autrefois attaint* upon such indictment, should be no bar to the subsequent appeal, but that the appellant "should have such and the like advantage as if the said acquittal or attainder had not been." The statute recognizes therefore the right which the heir at law had at the common law to bring an appeal for the death of his ancestor, and prevents the acquittal of the appellee from being an effectual bar to the suit. But upon the present occasion it becomes necessary to consider by what means the appellee who has waged his battel in answer to this appeal is to be ousted of that right; and in order to discuss that question properly, it will be necessary to see upon what grounds, and by what circumstances, that right is taken away. The authorities may be conveniently taken in the order of time in which they occur The first is Glanville,* who flourished in the time of H 2, A.D. 1154. In his book it is laid down, that in the case of an appeal, if it appears that there is a probable ground of suspicion, the party is not to be allowed to try the question by battel, but by the trial by ordeal, which at that time prevailed, and he says that the accuser in an appeal may decline duel either on account of his age, or mayhem, and then "*tenetur se purgare is qui accusatur perdei judicium scilicet per calidum ferrum vel per aquam pro diversitate conditionis hominum per ferrum callidum si fuerit homo liber per aquam si fuerit rusticus.*" And in chapter 2 he says, on a prosecution for a fraudulent concealment of treasure trove the defendant "*presumptione contrà eum faciente tenebitur per legem apparentem se purgare.*" And again, chapter 3, if

* Glanv., lib. 14, c. i.

a person be appealed of homicide, he is sometimes compelled to undergo the legal purgation, if he was taken in the flight by a crowd pursuing him, and this be regularly proved in Court by a jury of the country. So that it should seem in this last case that there was a collateral issue to be tried (as is done in the case of an escape) on the event of which depended the question, whether the party was to be allowed his trial by battel or not. The next authority is Bracton. This author in his chapter entitled "*Qualiter captus produci debet coram justiciariis et quare justiciarii examinare debent in duello injungendo et judicis,*" &c, has these words: "*Cum autem productus fuerit et de crimine ei imposito accusatus, si crimen statim confiteatur satis planum erit judicium: si autem negaverit et crimen defenderit precisè et sit aliquis qui eum appellat per verba legitima appellum facientia tunc autem defendit omnia precisè quæ ei imponuntur et nihil excipit contra appellantem habebit electionem utrum se ponere velit super patriam utrum culpabilis sit de crimine ei imposito vel non vel defendendi se per corpus suum.*" He goes on then to state, that it is the duty of the judges *ex officio*, and even though the appellee may have omitted it, to examine into the "*factum et causam appelli*" and the proceedings, that they may see whether they are correct, and if all are correct, then to award the trial by battel; and he then subjoins these words: "*et hæc vera sunt, quod appelatus per corpus suum se defendere poterit cum appellatus fuerit, nisi aliqua violenta præsumtio faciat contra ipsum, quæ probationem non admittit in contrarium, per quam dedicere vel defendere posset mortem et feloniam: sicut esse potest cum quis captus fuerit super mortuum cum cultello cruentato; mortem dedicere non poterit: et hæc est constitutio antiqua in quo casu non est opus alia probatione: in quo casu non est necesse probare per corpus nec per patriam ubi præsumptio violenta facit contra appellatum.*" (Lord ELLENBOROUGH, C. J.—So that if a man were found over a dead body with a bloody knife in his hand, it would, according to Bracton, be impossible for him to deny that he was the cause of the death, and he would be immediately condemned and executed. It certainly makes one retire with a degreee of horror from the consideration of such laws,

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which prevented a man from explaining such circumstances which, after all, were only *prima facie*, and no conclusive evidence against him. ABBOT, J.—A case might be put where a person should come up and find another lying wounded with a dagger in his body, and should draw it out, or should in assisting the wounded man wrench the knife out of the murderer's hand. Then if the murderer escaped leaving him with the body, according to this law he would be considered guilty of the murder, and be immediately hanged without a trial.) That hasty construction of guilt seems to have been afterwards abandoned, and it is not material to consider whether in such cases the Courts would now award instant execution, because the only conclusion sought to be established here is, that in such cases the appellee is not to be allowed his wager of battel; and though Bracton says, that in such case it is not necessary to prove it *per corpus nec per patriam*, still at least this must be considered as an authority to shew that in such cases the appellee, at all events, may not prove it *per corpus*, and that will be sufficient upon the present occasion. Bracton then goes on to put several other cases, as instances of the *violentapræsumptio*, such as "*Si quis jacuerit in domo aliqua de nocte solus cum aliquo qui fuerit interfectus;*" and this—"*Si duo ibi fuerint vel plures et hutesium non levaverint nec plagam a latronibus vel aliis qui interfecerint in dedensione facienda non receperint vel nec quis hominem interfecerit ostenderint de se vel de aliis.*" In these cases "*mortem dedicere non poterunt;*" and then there follows a still more remarkable passage:"*Si quis in domum suum notum vel ignotum receperit hospitandi causa vel alia hujusmodi et qui sanus et vivus visus fuit intrare et nunquam postea nisi mortuus, dominus domus si tunc domi fuerit vel alii de familia qui tunc præsentes fuerunt pœnam capitalem non evadent nisi forte per patriam fuerint liberati si justiciarii perspexerint viritatem per patriam debere inquiri.*" He then puts the instance of a servant and his master sleeping in one house, and the master being found dead in the morning, and adds, "*Homo tenebitur qui nec clamorem levavit nec plagam receperit nec in aliquo se opposuit ad defensionem: et idem dici poterit de extraneo quia vix evadere poterit periculum*

per inquisitionem patriæ propter tam gravem præsumptionem datam de tam occulto facto. Sed cum patria veritatem scire non possit de tam occulto facto qualiter liberabitur ille qui super patriam se posuerit? Revera satis liberat quia expresse non condemnat sicut dici poterit de charta cum satis acquietat ex quo speicaliter non onerat. Item poterit factum esse tam occultum quod secta sit nulla vel minus rite facta tamen calumniari non poterit quia initium facti sciri non poterit sicut de veneno dato: et quo casu non habebit appellatus electionem ultrum se ponere velit super patriam vel defendere se per corpus suum—sed oportet quod defendat se per corpus suum, quia patria nihil scire poterit de facto nisi per presumptionem et per auditum vel per mandatum quod quidem non sufficit ad probationem pro appellante nec pro appellato ad liberationem" From the above passages it should seem that in some cases of violent presumption the justices had a power to order execution "*nisi forte perspexerint veritatem per patriam debere inquiri.*" A discretion was therefore given them (the party being at all events ousted of the trial by battel in such cases) to send the appellee to a jury or not. And there is another instance afterwards put which shows forcibly in what sort of cases the battel was given, viz., where as *in veneno dato* there was no evidence for the jury. In such a case the appellee was compelled to fight. The next authority is Fleta, who wrote in 1272. He copies Bracton nearly *verbatim*, and it is not therefore necessary to give any passages from him. He states no further instances of the *violenta presumptio* than have been already cited. Britton (who wrote in 1300), c. 22, p. 40, *Title of Appeals*, enumerates the circumstances which will oust the appellee of battel. He says, "Many things, however, may destroy the right to battel in every felony, for if the appellant be mayhemed, or be within the years of fourteen, or beyond the age of seventy years, or be ordained within holy orders, or be a woman, or if being a man he can aid himself by matter of record, then he shall say, 'and this I am ready to prove in every manner which the Court shall award;'"*

*This passage in Britton seems to have reference only to the form of the count, which was materially different in cases where either from age, sex, or mayhem, the appellant was exempted from the battel, and those

and he adds, that the appellee shall not have his election of wager of battel if there is evidence to support his defence, or if he can aid himself by matter of record. So in Horne's *Mirror*, p. 158, A D. 1307, in addition to the other circumstances ousting battel, it is stated, if a party be indicted of the felony of murder he shall not wage battel (BAYLEY, J — Does that mean that he shall not wage battel on the indictment, or that there being a collateral indictment found against him it shall oust him of his wager of battel?)* The finding

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where he was not In the former cases the words *per corpus suum* were omitted; in the latter they were not This will very clearly appear from the terminations in the different appeals stated by Bracton, which are subjoined.

Appeal of murder, fol. 138.	*Offert se disrationare per corpus suum sicut ille qui praesens fuit et hoc vidit et sicut curia Domini regis considerat.*
Appeal *de pace et plagis*, fol. 144	*Offert se probare versus eum per corpus suum sicut curia considerat.*
Appeal *de pace et imprisonamento*, fol. 145 b.	*Offert probare per corpus suum vel alio modo sicut curia Domini regis consideravit.*
Appeal of robbery, fol. 146.	*Offert se disrationare versus eum per corpus suum sicut curia considerat.*
Appeal of arson and robbery, fol. 146 b.	*Offert se disrationare ut supra.*
Appeal of mayhem (wounding or maiming), fol. 144 b.	*Offert se disrationare versus eum sicut homo mahemiatus prout curia Domini regis consideraverit.*
Appeal of rape, fol. 147.	*A Faemina talis—offert probare versus ipsum sicut curia Domini regis consideraverit.*
Appeal by a widow of the death of her husband, fol. 148 b.	*Offert probare, &c., ut supra.*

*The reason here assigned in argument is perhaps not the true one, and certainly is by no means satisfactory. It is unquestionably laid down by various authorities that a previous indictment is an answer to the wager of battel; but the cases, if carefully examined, will probably be found to be those where the indictment at the suit of the king is still pending. As in Rastal, p. 50, where the plea is of an indictment still remaining before the Coroner. There does not seem to be any good reason why an indictment on which there has been a verdict of acquittal should deprive the party acquitted of the least advantage. But a very satisfactory reason may be assigned why an indictment still pending should deprive the party of his wager of battel. Bracton, lib. 3, c. 19, sect. 8— "*Cum autem elegerit defensionem per corpus suum et omnia concurrent quæ jungunt appellum statim vadietur duellum et quo casu si a pluribus appellatus fuerit de uno fæto et unâ plagâ et versus unum se defenderit recedet quietus versus omnes alios appellantes et etiam de sectâ regis, quia per hoc purgat innocentiam suum versus omnes ac si se poneret super patriam et patria omnio ipsum acquietaverit.*"

of the bill by the grand jury affords a strong presumption of the guilt of the party, and therefore he was not permitted to wage his battel. The next and most important authority is that of Staundford's *Pleas of the Crown*, lib. 3, c 13, p. 176 His words are these, "Trial by battel is another trial which a defendant in an appeal of felony may elect, that is, to fight with the appellant by way of trial whether he is guilty of the felony or not, and if the event of such battel be so favourable to the defendant that he vanquish the appellant, he shall go quit with respect to the appellant, and bar him of his appeal for ever And this is an ancient mode of trial in our law, and one much used in time past, as appears by divers precedents in the time of Edw. 3 and H. 4, which is not so disused but that it may be brought into use at this day if the defendant pleases, and there be nothing to support the counterplea of the other party," And in chap. 15, p. 178, it is said that "the reason why a man should be admitted in a case of appeal to try his cause by battel, seems to be this, that no evident or probable matter appears against him to prove him guilty of felony, but only a bare accusation of the plaintiff or plaintiffs, who are not credible witnesses in their own cause. Because in that the appellant demands judgment of death against the appellee, it is more reasonable that he should hazard his life with the defendant for the trial of it, if the defendant require it, than to put it on the country, who for default of evidence may be ignorant of it, and to leave God to whom all things are open, to give the verdict in such case *Scilicet*, by attributing the victory or vanquishment to the one party or the other as it pleaseth him; and for this our books are, that if there be anything which may serve the plaintiff for presumption or testimony that his cause is true, he shall oust the defendant of his trial by battel, as if the defendant was indicted of this felony before the

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Suppose then an appeal and an indictment pending at the same time. If the party in the appeal waged his battel and conquered he might then plead his acquittal by battel in bar of the indictment. But this would be in effect waging battel against the king, which by all the books he may not do. The Courts, therefore, might with great propriety in such a case refuse the wager of battel to the appellee. But where there has been a verdict on the indictment the case is otherwise. For there the king is already barred by the verdict, and the acquittal of the party by battel has

appeal commenced, or was taken with the mainour."* He then quotes Bracton, book 2, respecting the nature of these presumptions, and adds, that "Britton agrees with him, so that it appears by Bracton and Britton that in ancient times some of these presumptions were so vehement, that they were as condemnation to the other party, without any other trial, but they are not so at this day: for trial he shall have notwithstanding such presumption, but not by battel, as appears in Fitzherbert's *Abridgement*, title *Corone*, pl. 411, where a man was appealed of the death of his wife *et coronator villæ cum probis hominibus hos testatur est hoc idem testificatur dicens se capisse eum super factum cum cultello sanguinolento ideo consideratum est quod se non defendet per duellum*. And note the mainour in an appeal of death is a bloody knife with which being taken he shall be ousted of his wager of battel, and so it shall be in an appeal of robbery." From this passage of Staundford, it appears that there was an alteration of the law. For in Bracton's time these presumptions produced immediate execution, but in the time of Staundford they were only held to oust the defendant of his wager of battel, and to compel him to put himself upon the country. Staundford, it is observable, wrote soon after the statute 3 H. 7, c. i. passed, and at a period, therefore, when the attention of lawyers was directed to this subject. Soon after the work came out, much discussion arose amongst antiquaries respecting the trial by battel, and a good many of these contemporary works are to be found in Horne's collection of curious discourses. There is there a tract of Sir Robert Cotton on this subject, page 172; another by Mr. Whitcombe, p. 203, and a third by Mr. Algar, p. 217. Without going through long extracts from these works, the result of them all seems to be this, that

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no effect. This distinction between an indictment pending and not pending at the time of the appeal does not, however, seem (from the accounts here received) to have been at all adverted to in the case of the appeal now pending in the Court of K.B. in Ireland, where the appellant has, in answer to the wager of battel, put in a counterplea, stating the indictment on which the appellee had been previously arraigned and acquitted.

* "Mainour" means "taken in the act."

wherever there exists legal proof which can be adduced by the appellant, the appellee is ousted of his trial by battel. Pulton who wrote his book *De pace regis et regni* in 1609, and after the subject had undergone this discussion, agrees fully with Staundford. Finch's *Law*, p. 421, is to the same effect as Pulton; and so are *Co Litt.* 294, b, and 2 Inst. 240, which assign a similar reason (viz where there is no other evidence) for the wager of battel in the trial of a writ of right. He then cited Hawkins' *Pleas of the Crown*, lib 2, c. 45, s. 7; Blackst. *Com*, vol. 3, 446; Dufresne's *Glossary*, p. 187; Montesquieu's *Esprit des Loix*, lib. 28, c. 25; Robertson's *History of Charles V.*, vol 1, p. 275; Reeves' *Hist. English Law*, vol. 2, p. 25; Henry's *Hist of Great Britain*, vol. 1, p 332. The result of the law as laid down by Staundford, and the authorities subsequent to him, seems to be, that where evident or probable matter for the consideration of a jury exists, there the appellee shall not have his battel, but must put himself on the country. So that in this respect a modification took place of the older authorities, and a less violent presumption was held to be the subject of a valid counterplea. The same rule is deducible from the cases which are to be found in the year books and the other reports. This appears from Fitzherbert's *Abridgement*, tit. *Corone*, pl. 407, before cited, 20 E. 4, 6, and from Bro. Abr. tit. *Battaile*, pl. 4. Where it is laid down, that when a man is taken at the suit of the party, and escapes and flies, he shall not have battel, because he has broken the king's prison; and in the same book, placitum 5, Appeal of robbery before the justices at Newgate, defendant tendered battel, and ousted, because he had the mainour in the presence of others; and 12 E. 2 agrees with this. So also in pl. II., if defendant be indicted for the same fact, and this indictment be in Court, defendant shall not wage battel if indictment be good, but otherwise if indictment be bad. (Abbot, J.—These authorities carry it no further than the quotations from the elementary writers.) In *Rex* v. *Robert Tresilian and Others*, 1 *St. Trials*, II., the House of Lords refused the wager of battel to Sir Nicholas Brambre, even after the appellants had accepted it, and resolved that they would examine the articles touching the said Nicholas, and take due information, by all

true, necessary and convenient ways, that their consciences might be truly directed, &c. And in the note of the learned editor, it is laid down that in appeals of treason, battel does not lie, if it can be proved by witnesses; and for this, the case of *Lord Clarendon*, A.D. 1667, is cited.

The result of these authorities being, that in cases where strong and vehement presumptions exist, the party who was formerly subject to instant execution, is now only ousted of his trial by battel; it becomes necessary to show that the counterplea here discloses grounds for a violent presumption of guilt, and therefore that the battel cannot be allowed. The principal circumstances disclosed by the counterplea are these: That Mary Ashford, at seven in the morning, on the 27th of May, was found dead in a pit of water—that she had been recently alive—had been drowned—and that recently before her death some man had had carnal knowledge of her, up to which period she had been a virgin; that her arms had been forcibly grasped, and that there were stains of blood about her person.

(BAYLEY, J.—There is nothing stated in the counterplea from whence a necessary inference arises of her having been thrown into the pit; what is there to shew that she might not have thrown herself in, or have tumbled in?) There were marks of blood on some clover grass about a foot and a half from the footpath, and the counterplea states that the grass was covered with dew; the blood therefore must have flowed from some person's body carried by someone else along the footpath; as there would otherwise have been the impression of a foot displacing the dew upon the grass. (BAYLEY, J.—It is not alleged that the clover was in such a state as that if trod on it would necessarily have exhibited the marks; nor is it stated whether the blood might not have been there before the dew fell. In order to exclude the party from this mode of trial, you must allege positively that the blood displaced the dew, and not leave it entirely to inference.) The counterplea further states a coarse declaration by the appellee, that he would have carnal knowledge of her, or die by her; and that he was seen with her about three o'clock in the morning: that both their footsteps were traced, near the pit, and over a harrowed field,—that it appeared from

them that she had attempted to escape,—that he had overtaken her,—that they had then proceeded together to a place where there was an impression of a human figure on the grass with the legs and arms extended, and where there was an effusion of blood: that his footsteps alone were then traced from thence to within forty yards of the pit, where the hardness of the ground prevented their being further visible, and that there were marks of the footsteps of the appellee, running in a direction from the pit alone across the harrowed field and leading towards Holden's house, and also that very near to the edge of the bank of the pit, where the unfortunate girl was found, there was the mark of the shoe of a man's left foot. (Bayley, J.—That is not described as a recent impression — nor that it corresponded with Thornton's shoe. It is not even stated that Thornton's shoe was compared with it and found to be different, nor that from the state of the impression comparison was impossible.) It is stated that he on that night wore right and left shoes; and further that, upon his being searched, his linen was found stained with blood, and that he admitted that on the preceding night he had had carnal knowledge of Mary Ashford with her own consent. These circumstances, taken together, afford a strong presumption of guilt, and indeed a much stronger one than those mentioned by Bracton. For if it is said that these circumstances admit of an explanation, it may be answered, that the cases there stated did so too; for a man might have slept alone in the house with the murdered person, or be found over the body with a bloody knife, and still not be the murderer. But in those cases, as in this, the strong presumption of guilt arising from the facts stated, is sufficient to oust the battel. If it be argued that the cases in which this has been done, are where the party is taken with the mainour, it may be answered that that is only put as an instance of the general rule; which is, that wherever there is strong evidence or presumption of guilt, the question ought to be decided by the jury.

The counterplea therefore being established, the next question is, does the replication afford an answer to it? No case can be found in the books, in which an appellee has been permitted to reply fresh facts by way of a counter pre-

sumption of innocence. The only answer to be given, is by a traverse of the facts alleged in the counterplea. This replication does not deny any of the facts in the counterplea, but endeavours to set up an alibi and alleges his former acquittal. With respect to the alibi that would be good ground for the decision of a jury, and the acquittal by the statute 3 H 7 is made unavailable. Besides that proceeding, which was at the suit of the king, is as to this case *res inter alios acta*, and might have been founded upon different evidence. The public prosecution may have been conducted with less zeal for public justice, and the prosecutor may have neglected purposely to bring forward sufficient evidence. (BAYLEY, J.—So that you contend that an indictment would have barred the right of battel, but that the acquittal is to have no weight. ABBOT, J. —The indictment is as much *res inter alios acta* as the acquittal.) But supposing it be competent for the appellee to set up an alibi, that which he has stated is not sufficient, for the whole question of time, on which this alibi must stand or fall, appears to be this, that about a quarter after four she left Mary Butler's house, and within a quarter of an hour of that time, she was last seen by a witness; it is not therefore precisely alleged what time this was. Then there does come a precise averment that not more than twenty-five minutes before five, the appellee was seen at John Holden's house, a distance of a mile and a half from the pit. The whole turns on a few minutes more or less. This therefore cannot be considered as a sufficient alibi to remove the presumptions of guilt that the facts in the counterplea have raised. (BAYLEY, J.—You do not state it quite accurately. The fact is this; she leaves Mary Butler's, as stated in your counterplea, at about a quarter after four. In about or near a quarter of an hour afterwards, she is seen first by one man and then by another in Bell Lane. She has then to go through Bell Lane, and according to the supposition of the facts in the counterplea, she has to cross the harrowed field, to be met by him, then to run away and be overtaken, and then after the criminal intercourse had taken place, to be carried from thence to the pit and thrown in, and then the appellee had to run and be close to John Holden's house at 25 minutes before five, which by the nearest way is a mile

and a half, and by the readiest way nearly two miles from the spot; and besides, all this must have happened in broad day-light, and when a good many people appear to have been about. The great difficulty after all is, whether the foot-steps in the harrowed field were imprinted before four o'clock or after, the parties having been seen together at three o'clock near that spot.)

TINDAL, *contra*, made four points, first, That the trial by battel was the undoubted right of the defendant and not of the plaintiff in an appeal. Secondly, That the counterplea did not bring the case within the exceptions, which the law allows to a wager of battel, and that it was too vague and uncertain in its statement of the facts contained in it. Thirdly, That if the counterplea was admissible, the replication contained a complete answer to it; and lastly, That the proper judgment to be given by the Court upon this record, was not that the defendant should be allowed his wager of battel, but that he should go without day.

As to the first point, it is observable that this mode of trial was brought into England by the Normans. This appears from the collection of Saxon laws by Lambard in his "*Tractatus de priscis Anglorum legibus*," in which there is no allusion to the trial by battel. In the laws however of William the Conquerer set out in the above collection, and also in the *Notae*, &c. *ad Eadmerum*, by Selden, 4 Oper. Seld., p. 1658, it is most distinctly pointed out. It is there declared, that if a Frenchman appeals an Englishman of perjury, murder, theft, manslaughter, or robbery, "*Anglus se defendat per quod melius noverit aut judicio aut duello.*" The law therefore being of Norman origin, and unknown in this country before the Conquest, it seems material to examine into their books on this subject. In the *Grand Coustumier* of Normandy, "*de suyte de meurdre*, c. 68, fol. lxxi.," there is this passage, "*suyte de meurdre* should be in this manner; R. complains of T., who has murdered his father feloniously in the peace of God and of the duke, which he is ready to prove, and to make him acknowledge *en une heure du jour*." These last words mean "in some hour of the day," or "during the day," for if the battel lasted until the stars began to shine, the defendant gained the victory; for, as

Appendix VII.

Bracton expressly says, the appellant undertook to make him acknowledge it "*una hora diei.*" The book goes on to say, "if T. denies this, word for word, and offers his pledge, and to defend himself of it, they ought first to take the pledge of the defendant, and then that of the appellor." Then there is a note. "It appears that the defendant ought first to throw his gage, and the plaintiff afterwards" So far then the right appears inherent in the appellee Glanville is not so express upon the subject. His words are, lib. 14, c. I —"*Accusato quoque e contra adversus eundem per omnia in curia legitime negante tunc per duellum solet placitum terminari.*" So that it does not clearly appear from this author in whom the election was. Then comes Bracton, who of all the early writers is the most full upon the subject. He states the right most distinctly to be that of the defendant, for he says, that when the defendant is brought into Court "*habebit electionem utrum se ponere velit super patriam vel defendenti se per corpus suum.* Lib. 3, c. 18, fol. 137 Fleta, lib. I., c. 31, follows Bracton, and in almost precisely the same words, which bring it to the time of Edward 1st: (for in Fleta and in Britton, who also wrote a little later, reference is made to the statute of Westminister 2d, 13 E. 1,) and Britton varies no further from Fleta and Bracton, than in translating their Latin into Norman French. Staunford, who wrote in the time of Edward the 6th, copies according to his usual mode both the passage from Bracton and from Britton, and therefore carries it no further than those authors had done. The last author on this point to be cited is Coke, 2d Inst 247. He says, "in case of life in an appeal of felony, the defendant may chuse either to put himself on his country, or to try by body to body." So that there is a regular chain of authorities proving that the trial by battel is the defendant's right.

Then if so, it is the duty of the appellant who seeks to oust him of this right to bring the case within some of the exceptions contained in the books, and the second point is, that the counterplea does not do so. All the cases in which the wager of battel has been taken from the defendant fall under one or other of these heads; viz. where the guilt of the

party is self-evident; or where there is some single fact capable of proof by the inspection of the Court; or where the appellant avails himself of some matter of record. The first case that is reported is in Fitzherbert's *Abridgement*, *tit. Corone*, pl. 125, where in an appeal of robbery sued by a citizen of London defendant waged battel, to which the plaintiff said, that he was a citizen of London, and that they have a franchise that no battel shall be waged against them: the defendant demanded judgment inasmuch as the plaintiff tendered by his count a proof by his body, and after an argument on this point, the plaintiff voluntarily rejoined the battel, upon which the citizens of London sent before the Court a writ reciting their franchise, and demanding that the Court should not allow the battel in prejudice of their franchise, upon which *curia adv. vult*. This therefore is a case where the right to battel is sought to be ousted by matter of record. The next class of cases is, where the party is taken with the mainour. Fitzherbert, *tit Corone*, pl 144. A man was taken with cloth and a horse which he had stolen, and was appealed, and would have defended himself "*par son mayn*," but Wilby, J., said, For this that we see the mainour with you, you shall not be received to this issue. So pl. 204 One A. was arraigned with the mainours; this is to say, with two pieces of tapestry, and two linen frocks, and in pl. 230, there was an appeal of robbery, and held, that if defendant waged battel, the plaintiff may bring the mainour into Court, and oust him of his battel; and Gascoigne, C.J., said, If the defendant waged battel, as to say, that the defendant maimed him at the time of the robbery, and then may shew the maim to the Court. So that here there is another species of excuse to be proved by the actual inspection of the Court. So in Bro. Abr. tit. *Appeal*, pl. 23, 7 H. 4, 43. If a man be robbed in London, and the felon with mainour escape into Middlesex, the appeal may be well brought in Middlesex, and that in whatever county or place the felony may have been committed; yet upon an appeal *in banco regis* the mainour shall be brought into court. There is one other case in Bro. Abr. tit. *Battaile*, pl. 7, 22 Ed. 4, 19, where the mainour being brought into Court proved to be twenty pence, and Fairfax, J., says, This not mainour, for one penny cannot be known

from another; so that here there was an objection taken as to the sufficiency of the mainour, which shows that in this and the other cases there must have been an examination entered into before the Judges, similar perhaps to the trial by proofs in a writ of dower, and that the facts, as to the taking and the identity of the property, must have been brought before them by a sort of preliminary investigation before they determined whether the trial should take place by wager of battel or by the country * There is another set of cases in which the escape of the defendant from prison ousts his wager of battel. Fitzherbert, *Corone*, pl. 154. There a collateral issue was joined, whether the appellee had broken prison or not, and a writ was issued to the sheriff to certify to the judges as to the breaking of the prison, which, as it appears from pl 435, he might do; the words in the latter place being, "that coroners may record the breaking of prison, and by that record the prisoners may be hanged." After the sheriff's return to the writ, the appellee replied a charter of pardon as to the breach of prison, and the Court received it, and restored him to his wager of battel. And in pl. 157 objection was taken, that as the defendant was leading to prison he betook himself to flight, and so broke the prison of the king. The appellee was put to answer this, and he said that he never was attached by an officer of the king: whereupon a writ issued to inquire, &c. So that whether there was a constructive or an actual breaking of the prison, it was always tried by a matter of record. And these cases are material in another point of view; for here the appellee replies fresh matter to the counterplea of the appellant. These are all the decided cases that are to be found in the books, except that on which Bracton relies, which is to be found in Fitzherbert, *Cor.* pl. 411, Hil 6 H. 3. A man is appealed for that he killed his wife, and the coroner of the ville with true and lawful men testify this, and S. also testifies it, and that he took him *super factum* (in the act) with the bloody knife;

* Staunford, fol. 179a, gives this reason why the being taken in the mainour ousted the appellee of his wager of battel. *Et nul marveil si mainour est sufficie't chose de luy ouster de battail. Car in an'cie't te'ps le fellon purroit avoir este arrain sur ceo auxi avant come il serroit sur enditement.*

et ideo consideratum est quod non debet defendere se per battalum " With this exception, all the others are cases where the party is ousted of his trial by battel either by matter of record, or by actual inspection of the Court; for the mainour and the maim are tried by the inspection of the Court, and the breaking of the prison, and the citizenship of London, are tried by matter or record: so that neither in the year books, in Fitzherbert, nor in Brooke is there any case but this, in which anything tending to shew the guilt or innocence of the party could be submitted to a previous trial by the country to ascertain whether the trial by battel should be allowed. (ABBOT, J.—And in this case the coroner certifies it to the Court.)* These being the authorities contained in the books from which the text writers have taken their law, and upon which they as well as others must rely, the law is rather to be deduced from them, than from the text writers, if there be any diversity. In addition to the causes of exemption mentioned by Bracton in the passages quoted by the other side, there are others contained, *Lib.* 3, c. 21, sect 12. These are mayhem, age above sixty years, *regia dignitas*, and sex, where a woman brings the appeal *de morte viri sui*. But it is observable that all these fall within the rule laid down; for the Court, as appears before, are to see the mayhem: as to sex and *regia dignitas*, they can take official notice of both these, and with respect to age above sixty years, they may try it by proof as they do in cases of dower (BAYLEY, J.—I think the practice in these cases, is for the Court to receive affidavits for the purpose of guiding its judgment.) And in the case of taking with the mainour, there must have been some proof given before the Court by affidavit or otherwise.

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*It may be a question whether this was not by the older writers classed as a case of taking with the mainour. For Staunford says of it—" *Et nota que le mainour in appel de mort un sanguinolent culteau ove quel esteant prise il serra ouste de batail gager.*" It should seem that S. was in this case examined as a witness by the Court. As in a trial by proof: In dower, defendant pleaded that the husband was alive, *et hoc paratus est verificare;* to which the woman replied, that he died at F., and was buried there, *et hoc paratus est verificare qualitercunque, &c. Ideo consideratum est quid predictus M. doceat de morte et dictus R. de vitâ viri et super hoc dies data est;* at which day the woman examined two witnesses in Court, and had judgment, Mo. 14 pl. 555 Pasch. 2 Eliz., *Thorn* v. *Rolfe.*

Fleta follows Bracton in these additional exceptions, and so the law remained until the time of Staunford, who is the first writer who has made any addition to them. If his expressions be taken to the letter, they might support the counterplea: but they are not to be taken literally. The statute of H. 7 nearly put an end to the practice of bringing appeals, for after that time, the usual mode of proceeding was by indictment upon which the party being convicted was punished, and then no appeal was necessary. And in fact there are not many cases upon record subsequent to that period. Now Staunford wrote nearly sixty years after that statute; and if therefore he advances law unauthorized by the older writers, the probability is that he is wrong. Then as to the passage itself, he says, "The reason why a man in an appeal shall be admitted to try by battel, seems to be this, that no evident or probable matter appears against him" Now no such reason, as appears from the books, was ever given before, and the reason itself is bad. (Bayley, J.—It excludes battel in all cases of doubt, saying, that if there be any evidence, there shall be no battel, and it is obvious, that if there be none, the party would not require it. (Lord Ellenborough, C J —It is giving a man the power to fight only in those cases where he must fight for fighting's sake alone.) The chapter, therefore, is not entitled to any greater authority than that of the books which are quoted in the margin. Staunford further says, "Our books are, that if there be any thing which can serve the plaintiff for a presumption of testimony that his cause is true, he shall oust the defendant of his battel." But where are the books that state this, for he cites none? He then proceeds to exemplify it, and the examples are, "as if the defendant be indicted, or be taken with the mainour," and then proceeds as is his custom, to set down the passages from Bracton and Britton which have been already quoted. The authorities therefore which he cites, and the examples which he produces, by no means prove the position, which therefore is entitled to no weight. Besides if a counterplea framed upon this authority were traversed, how could such preliminary issue be tried? By what means is the Court to summon a Warwickshire jury for that purpose? Then if the law has provided no means for trying the truth

of such a plea, it is a strong argument to shew that such a plea is inadmissible. But the counterplea itself is bad: it begins by stating that there are the violent presumptions and proofs following, that is to say, &c. Now this is an inaccurate mode of expression, for a presumption is an inference deducible from proofs, and if issue were taken upon it, what would there be to be tried? It then proceeds to state, that it appeared and was manifest to divers credible witnesses, that, &c. Not that it was so, but that it appeared so to certain persons, and those not named. Now how can the opinion of unknown persons as to facts be tried? There might be twenty persons present, ten of whom might be of one opinion, and ten of another, and yet this fact would support the counterplea as framed.

The Court then called upon Chitty, who contended that this mode of pleading was sufficient, for it could not have appeared to the credible witnesses if it were not so. But that at all events the objection only went to part of the allegations in the counterplea and supposing them to be struck out, there would still remain sufficient to oust the appellee of the battel. The Court then directed Tindal to proceed.

The third point is, that if this be a good counterplea, the replication is a good answer. The first objection to the replication is, that the time when Mary Ashford left the house of Mary Butler, upon which the alibi materially depends, is alleged in too uncertain a manner as being at about a quarter past four. But this period of time is taken from the counterplea, and is a fact not within the knowledge of the defendant. He therefore was obliged in framing his answer to their plea, to follow the time fixed by them; besides the time, after all, is left uncertain only for a few minutes more or less, and the alibi does not depend upon so nice a calculation. The second objection is, that the appellee had no right to put upon the record the acquittal upon the former indictment. But the construction put upon the statute of the 3 H. 7, c. 1, is not the true one. That act only took away the plea of *autrefois acquit*, or *autrefois attaint*, but did not apply to a case like the present. The statute preserved the right of appeal, and prevented the acquittal from being a bar; but for collateral purposes the Court may, and do take notice that there has been

an acquittal. *Castell* v. *Bambridge and Corbet*, 2 Strange, 854, where the Court bailed Bambridge because he had been acquitted. And even supposing the appellee not to have a right to plead this, still enough will remain upon the replication to be an answer to the counterplea. But it is said the appellee has no right to set up counter presumptions of innocence The case in Fitzherbert, pl. 154, shews that fresh matter may be alleged by the defendant, and it would be extremely hard if it were not so. (Lord ELLENBOROUGH, C.J.— If one party has a right to state facts, the other party must have the same right; for a presumption means a conclusion drawn from the whole evidence, and the whole evidence must therefore be stated.) If it were not so there might be a complete *suppressio veri*, for they might take care not to state any thing in their plea which was false, but at the same time might omit everything which made for the other party, and the appellee could gain nothing by traversing such a plea, for the issue must be found against him notwithstanding all the other circumstances favourable to him were proved at the trial. Then supposing the replication to be right in stating fresh matter, how does the case stand? Mary Ashford leaves Mary Butler's house at about a quarter past four; she has then one mile and a quarter to walk to the pit; allowing twenty minutes for this, which under all the circumstances is too short, it brings the time at which she arrives at the pit to 25 minutes before five. Now where is Abraham Thornton then? He is seen at Holden's house by four witnesses above all suspicion, at a distance of more than one mile and a half from the pit. Now besides this, there is the running about, there is the pursuit, there is the rape, and lastly the murder, to be committed; all which must have taken some time: suppose a quarter of an hour is allowed for all this, that will bring the time at which Thornton must be supposed to have left the pit to ten minutes before five, the very period of time when he is seen talking with a man of the name of John Haydon one mile further on: so that then he was more than two miles and a half from the pit. The replication then goes on to carry him by the testimony of other persons in a regular course on his road to his father's house at Castle Bromwich. If this be so, it is not only

improbable, but impossible that he could have committed the murder; and the replication therefore is a complete answer to the counterplea.

The last point is, that if judgment on this demurrer be given for the appellee, it must be, not that he be allowed his wager of battel, but that the appellor take nothing by his writ, and that the appellee go thereof without day. And though this is not the prayer of the replication, still if the appellee be entitled to it, the Court will *ex officio* award the true judgment, as is laid down in Plowden, 66. And in *Le Bret* v. *Papillon*, 4 East, 502, the Court held that they might and ought *ex officio* to give such judgment on the whole record as ought to be given without regard to the issues found, or to any imperfection in the prayer of judgment made on either side In *Rastal's Entries*, 50, there is a record of this sort. The appellee there waged his battel, to which there was a counterplea of an indictment; replication *nul tiel* recorded and prayer that the defendant may be admitted to wage his battel. The Court issued *a certiorari* to the coroner to return the indictment; whereupon the appellee prayed the judgment of the Court, that the writ of appeal might be quashed; and the Court gave judgment that he should go thereof without day.* (Bayley, J.—There there

* The following abstract of the pleadings in this case, in Rastal, was read by Mr. Justice Abbot, having been abstracted by Mr. Dealtry from the original record, which was produced in Court:—

Smyth v. *Ruston, Hepey and Others.*

Coventry, Ss—Thomas Smyth, the brother and heir of Richard Smyth, appeals Richard Ruston and John Hepey of the death of the said Richard Smyth, charging that Lawrence Wynstanley committed the murder on St. Lawrence's Day, 13 Hen.; and Robert Boyle, Richard Ruston, Henry Ashley, and John Hepey commanded, abetted, and assisted him. Ruston and Hepey appear, and Ruston pleads that his name is Ruxton, which he is ready to verify; and as to the felony and murder he pleads not guilty, and puts himself upon the country, and Smyth doth the like.

Hepey pleads that he is not guilty, and this he is ready to defend against the said Thomas by his body, and therefore he wages battel, &c.

Thomas Smyth replies that Ruston is as well known by that name as by the name of Ruxton, and prays that this may be inquired by the country, and Ruston doth the like.

And he says that Hepey ought not to be permitted to wage battel with him, because he says that on the Feast of St. Lawrence, 13 Hen. 6, before Robert Topclyff, coroner of the city of Coventry, upon view of the body of Richard Smyth, by the oath of twelve jurors it was presented,

was a false fact alleged in the counterplea.) So solid distinction can be taken on the ground, for here the replication contradicts the counterplea, and the demurrer admits the facts contained in the replication to be true. Suppose after the battel had been awarded the plaintiff should confess the appeal to be false, or that the murdered person were produced alive in Court, would the Court permit the battel to proceed? These are not imaginary cases, for Bro. Abr. *Appeal*, pl. 151. 13 H. 4, and 11 R. 2, the plaintiff acknowledged his appeal to be false, and in the yearbook, 8 H. 4, f. 17, the party supposed to be dead was produced in Court. Now what distinction was there between those cases and the present? The replication here asserts facts which make it equally impossible for the appellee to be guilty, and these facts are by the demurrer admitted. Bracton, lib. 3, c. 20, f. 140 *Item fit mentio de die ad quod eadem ratio poterit assignari et etiam alia quia si appellatus docere poterit per certa judicia et proborum hominum testificationem se eadem die fuisse alibi ita quod nullo modo præsumi posset contra ipsum quod interesse posset tali facto tali die propter locum ita remotum quod hoc esset impossibile, tunc cadet*

That Wynstanley committed the murder, and that Boyle, Ruston, Ashley, and Hepey commanded, &c., &c.; and this he is ready to verify, &c., and he prays judgment that the said John Hepey may not be admitted to wage battel, &c. And he prays the writ of our lord the king to be directed to the coroner to certify the indictment; and it is granted to him, returnable in one month of Easter, wheresoever, &c.

And the said John Hepey saith that there is not any such record of any such indictment as the said Thomas Smyth has alleged, and this he is ready to verify; and thereupon he prays judgment, and that he may be admitted to wage battel with the said Thomas.

The trial of the issue with Ruston is put off until Wynstanley, the principal, be in some manner lawfully convicted. And Ruston and Hepey are admitted to bail.

In one month of Easter Smyth comes by his attorney, and Ruston and Hepey in their proper persons. And the coroner returned that there is not, nor doth there remain with him, any indictment against the said John Hepey of the death aforesaid. Whereupon the said Hepey prays that the original writ of appeal may be altogether quashed and vacated, and that he may be dismissed by the Court here—*Curia non advisatur*. Upon which day is given to the octave of St. John the Baptist. And Ruston and Hepey are again delivered to bail.

At which day come, as well Thomas Smyth by his attorney as Ruston and Hepey in their proper persons; and Hepey, as before, prays that the original writ of appeal may be altogether quashed, &c.

Whereupon it is considered, That the said John Hepey, as to the suit of the said Thomas, do go thereof without day, &c.

*intentio appellantis.** Fleta, lib. 1, c. 34, sec. 28, is to the same effect. An admission of the falsehood of the appeal can never come too late; for Staunford, fo. 178 b, lays it down that even upon the field of battel, an acknowledgment that the appeal is false, is equivalent to a vanquishment. The appellee, therefore, is on this point also entitled to judgment. Notwithstanding then the opinion of the learned persons and foreign writers cited on the other side as to the inconvenience and impiety of this mode of trial, still, if it be right of the appellee, the Court, whatever may be the consequences, will award it to him, unless upon the cases and authorities last cited, they should be of opinion that he is entitled to their judgment that the writ of appeal be quashed, and that he go thereof without day.

Chitty in reply—It is not necessary to discuss the first point made on the other side, because it is admitted that the counterplea must bring the case within some of the exceptions. There is no authority for saying that the presumption of guilt must arise from one single fact; for the mainour itself involves many facts, viz., that the property was stolen, its identity, and its being found on the prisoner, and the instances given by Bracton are all of a complicated nature, being a collection of circumstances, from the whole of which taken together the guilt is presumed. It is admitted that Staunford is a direct authority for the counterplea, but it is contended that he is not good authority; he, however, is an author of considerable weight, and was a judge, and he is spoken by Lord Coke with the highest approbation. Pulton also, who wrote at a subsequent time, and who was himself an author of considerable note, adopts the law as laid down by him. The instances put by Bracton are by no means conclusive of guilt, nor are they stronger than the case stated in the counterplea. (Lord Ellenborough, C.J.—Whatever might be the opinion which the Court might now form of such cases, still the Court then seemed to have considered that they would not admit of denial. You are to

* By the word *intentio* Bracton means the count or declaration. The phrase is taken from the civil law, which it is well known he made his model as far as he was able.

bring your case within some of these exceptions; and in order to do so, must you not shew that here there can exist no doubt? (BAYLEY, J.—The instances at that time went beyond the rule. That does not prove the rule to be wrong which was, that battel should only be ousted where there was no doubt of the guilt, and at that time these instances went that length.) As to the objection to the form of this counterplea that it does not state the circumstances as facts, but only that they appeared to divers credible witnesses to be so, that has already received an answer, and if it were held to be a good objection, still there would be sufficient left in the counterplea, to oust the appellee of his wager of battel. Then as to the replication, there is no authority, which has been quoted, which warrants it; and if the reason given for receiving the counterplea be good, namely, that there is some evident or probable matter, and so something upon which a jury are to determine, that will apply with additional force against admitting this replication as an answer to it, for from the replication there appears to be a contradiction of the facts upon which it is peculiarly the province of the jury to decide; so that the very circumstances stated in the replication strongly shew that this case ought to be decided by a jury, and not by the wager of battel. And as to the last point, that the judgment must be that the appellee go without day, the rule was well laid down in *Bowen* v. *Shapcott*, 1 East, 544—"That where one pleads a fact which he knows to be false, and a verdict be against him, the judgment is final; but upon a demurrer to a plea in abatement, there shall be a *respondeas ouster*, because every man shall not be presumed to know the matter of law which he leaves to the judgment of the Court." And that was a demurrer to a replication to a plea in abatement, which is very similar to this present case As to the precedent cited from Rastal, two answers may be given to it. First, that there a false fact was pleaded, which distinguishes it from the present case: and, secondly, that according to Fleta, lib. 1, c. 34, and Bracton, lib 1, c. 20, fol. 140, it appears that an appeal of murder was not sustainable if there had been previously no coroner's inquest. The fact, therefore, appearing on record by the coroner's return in Rastal, the Court might

well give judgment that the defendant should go without day. But in Fitzherbert, pl. 154, where one was appealed of the robbery and said that he would defend himself "*par son mayn*" to which the appellant replied, that he had broken prison; on which a writ was sued to the sheriff who returned the same *tardè;* upon which the appellee shewed a charter of pardon as to the breaking of prison, and it was allowed: the Court there did not give judgment for the appellee generally, but only that he should wage his battel. At all events, therefore, the Court now will only give judgment in this case that the appellee be allowed his wager of battel.

Lord ELLENBOROUGH, C.J.—The cases which have been cited in this argument, and the others, to which we ourselves have referred, shew very distinctly that the general mode of trial by law in a case of appeal is by battel, at the election of the appellee, unless the case be brought within certain exceptions. As, for instance, where the appellant is an infant, or a woman, or above sixty years of age, or where the appellee is taken with the mainour, or has broken prison. Now, in addition to all these, there is the case where great and violent presumptions of guilt exist against the appellee, which admit of no denial or proof to the contrary Without going at length into the discussion of the circumstances disclosed by the counterplea and replication, here it is quite sufficient to say, that this case is not, like those in Bracton, one which admits of no denial, or proof to the contrary. The consequence therefore must be, that the usual and constitutional mode of trial must take place, unless indeed in respect of the plaintiff's having, by the counterplea, declined the wager of battel, the judgment of the Court now must be, that the defendant should go without day Upon which point I pronounce no opinion at present, but wish, if it be necessary, to hear a further argument

BAYLEY, J —I am of the same opinion. The mode of proceeding, by appeal, is unusual in our law, being brought, not for the benefit of the public, but for that of the party, and being a private suit, wholly under his control. It ought, therefore, to be watched very narrowly by the Court; for it may take place after trial and acquittal on an indictment at

the suit of the king; and the execution under it is entirely at the option of the party suing, whose sole object it may be to obtain a pecuniary satisfaction. One inconvenience attending this mode of proceeding is, that the party who institutes it must be willing, if required, to stake his life in support of his accusation. For the battel is the right of the appellee at his election, unless he be excluded from it by some violent presumption of guilt existing against him. On going through the whole of these proceedings they do not raise in my mind that violent presumption which is by law required to oust the appellee of his wager of battel. Some parts of the counterplea are insufficiently alleged. With respect to those parts of the counterplea where it is stated that certain facts appeared and were manifest to divers credible witnesses, that is, in my opinion, not a proper mode of alleging those facts, and therefore the Court ought not to take them into their consideration. On the whole, however, I think that there is not sufficient on the face of these proceedings to justify the Court in refusing the battel. As to the effect which the decision against the counterplea may produce, and what must be ultimately the judgment of the Court, whether that the appellee be allowed his wager of battel or go without day, I have not at present made up my mind. It may be a question to be considered by the appellant whether he wishes any further judgment to be given.

Abbot, J.—I am of the same opinion, that this counterplea is not sufficient to oust the appellee of his wager of battel. The appeal seems to have been in its original a challenge, and the party accused was allowed to wage his battel, unless in certain excepted cases: as for instance, where the appellant was an infant, or maimed, or above sixty years of age, or a woman; and perhaps it was for this amongst other reasons that a woman was allowed to appeal only in one case, viz., that of the death of her husband. So in the case of an approver, if the person claiming to be so was a woman, an infant, maimed, or above sixty, he was not allowed to be an approver, and for this reason, that in such cases the defendant would lose the wager of battel. 2 Hale's P.C. 233. This shews the nature of this proceeding as being in its original

a challenge,* and that the battel was the right of the appellee at his election, unless certain exceptions existed. Then has this appellant brought himself within any of those exceptions which entitle him to decline the wager of battel? It is said that he has done so, by pleading a violent presumption of guilt against the appellee. Now as to this the rule is to be found in Bracton. The presumption must be strong and vehement, so as not to admit of denial, or proof to the contrary. It must be so strong, vehement and incapable of contradiction, that the Court might be warranted in awarding execution thereon. It is not necessary to consider whether the instances of the rule put by Bracton are or are not of this description. I think they are not. But at the time when Bracton wrote they were so considered, and it was on that ground that they were put as instances of the rule. If, therefore, there was no insufficiency in the mode of averring the facts stated in the counterplea, and if all the circumstances there stated were well pleaded, still I should be of opinion that they did not amount to a presumption of the kind mentioned by Bracton, namely, one so strong and vehement as to be incapable of contradiction. The defendant therefore is entitled to this his lawful mode of trial What the consequences of deciding that this counterplea is insufficient may be, the Court will, if necessary, take further time to consider.

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* This seems to be satisfactorily made out in "An argument for construing largely the right of the appellee to insist on the trial by battel," by E. A. Kendall, F.A.S., third edition, 1818, and the learned writer gives the ancient form of the count from the assizes of Jerusalem, by which it clearly appears that the appellor gave the challenge in case the appellee denied the charge made against him. The title of the chapter in the assizes of Jerusalem is this—"*Qui veaut faire Apeau de Murtre, et le Murtrier est en la Court present, que il doit faire et dire quant il l'a apelé.*"

The chapter runs thus—"*Qui veaut maintenant faire Apeau de Murtre d'ome, ou de feme, ou d' enfaut, qui ait esté murtri et mostre à Court, si com est devant dit, et celui ou cele que il veaut apeler est present en la Court, il doit faire dire en la Court, par son conseil, 'Sire, tel se clame á vous de tel, qui la est, qui a tel murtri; et se il le noie, il est prest que il en preuve de son cors contre le sien, et que il le rende mort ou recreant en une oure dou jour; et vées ci son gage.' et nome tous trois, l'Apelour et l'Apelé, et le murtri. Lors s' agenoulle l'Apeloir devant le Seignor, et li tent son gage,*" *Assizes et Bons Usages du Royaume de Jerusalem; tirés d'un Manuscrit de la Bibliothèque Vaticane.* Par Jean d'Ibelin, Comte de Japhe, &c., &c., Paris, 1690, fol, chap, lxxxvii.

HOLROYD, J.—I am of the same opinion. The counterplea, either taken alone or coupled with the replication, is not sufficient to oust the appellee of his wager of battel. It appears upon the counterplea that the appellee and Mary Ashford were together on the night of the 26th of May. There are several circumstances of a suspicious nature, as to what passed between them, stated. It appears that they separated in the course of the night, and that Mary Ashford went alone to Butler's house. It is not stated that they ever met again. There is no allegation to this effect, nor is there any circumstance stated, inconsistent with the idea that she might have accidentally fallen into the pit through giddiness and loss of blood. All the suspicious circumstances before alluded to might have happened before the separation took place, and then no motive could remain why any murder should have been committed. In addition to this, the replication states an alibi, which affords a strong presumption in favour of the innocence of the appellee, and must be taken conjointly with the counterplea into the consideration of the Court. The judgment of the Court therefore on the demurrer must be with the appellee.

Lord ELLENBOROUGH, C.J.—The general law of the land is in favour of the wager of battel, and it is our duty to pronounce the law as it is, and not as we may wish it to be. Whatever prejudices therefore may exist against this mode of trial, still as it is the law of the land, the Court must pronounce judgment for it.

GURNEY then, on the part of the appellant, prayed time for a day or two to consider whether the appellant would wish to have any further argument on the point about which the Court entertained doubts: which was granted.

Lord ELLENBOROUGH, C.J.—Let there be entered on the record, *curia advisare vult*.

Monday, 20th April.

And now GURNEY appeared for the appellant, and stated that he prayed no further judgment. Whereupon, by consent of both parties, the Court ordered that judgment be stayed

on the appeal: and that the appellee be discharged. The proceedings were then handed over to the Crown side of the Court, and Thornton was immediately arraigned by Mr. Barlow on the appeal, at the suit of the king, to which he pleaded instanter "*autrefois acquit.*"

The ATTORNEY-GENERAL then, being present in Court, confessed the plea to be true. Whereupon the Court gave judgment that the appellee should go thereof without day. The appellee was immediately discharged

APPENDIX VIII.

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Appendix VIII.

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The trial of Mary Queen of Scots was the first formal trial of a crowned and accredited Sovereign in historic times. It took place not, as many people think, for any of her deeds or misdeeds done during her reign in Scotland, but on account of her alleged complicity in the Babington plot which designed to free her and to kill Queen Elizabeth of England, a plot into which she, a prisioner for eighteen years of that Queen in England, had been entrapped by Queen Elizabeth's faithful creature Walsingham. This volume gives the State Trial, the legal processes which led up to it, the tortuous policy of the English lawyers, and a rare account of the Queen's last miseries borne with such dignity and bravery.

The Trial of Captain Porteous. (1736.) Edited by WILLIAM ROUGHEAD. Dedicated to the Hon. LORD ARDWALL.

The trial of Captain John Porteous, "a name memorable in the traditions of Edinburgh as well as in the records of criminal jurisprudence" (Sir Walter Scott), took place in July, 1736, and in view of the strange and far-reaching events by which it was attended is certainly one of the most remarkable that ever came before the High Court of Justiciary. The editor has been fortunate enough to find in the British Museum and Public Record Office much unpublished material, throwing light upon what Professor Hume Brown, in his *History of Scotland*, describes as "one of the most dramatic incidents in the national history." Much new matter has also been obtained from the Records of Edinburgh Town Council and other original MSS.

The Annesley Case. (1743.) Edited by ANDREW LANG.

The Annesley Case, in which James Annesley claimed to be the legitimate heir of Arthur, third Lord Altham, was tried in Ireland in November, 1743. The claimant, James Annesley, if his story be true, enjoyed a life of adventure and romance that is seldom met with outside the pages of fiction. His early years were none too happy, and on the death of his father, Lord

Altham, he was destitute of all friends and depended upon the charity of others for his livelihood. The Earl of Anglesey, the defendant in the case, then came forward and claimed the title of Lord Altham, as brother and heir to the deceased lord, upon the supposition that the late lord had died without male issue. About four months after the death of the late Lord Altham, James Annesley was, through the instrumentality of the Earl of Anglesey, kidnapped, sent to America, and there sold for a common slave. He remained in this condition for a number of years until the story of his unfortunate life reached the ears of those who helped him to return once more to Great Britain, and there his case was taken up with such vigour as to enable him to obtain a verdict in his favour at the hands of the judges and jury before whom the case was tried.

The Trial of Lord Lovat. (1747.) Edited by DAVID N. MACKAY. Dedicated to the Right Hon. DONALD JAMES, LORD REAY.

Lord Lovat's trial in 1747 and his condemnation to death for treason marked the close of an epoch in Scottish history, the end of the clan period in the Highlands. When a hundred and seventeen peers answered, with weary monotony, "Guilty, upon my honour," the public career of the last Scottish clan dictator came to an end. Thenceforward the name "chief" was to be a thing of polite conceit, except when the bearer had other claims to respect. Till then clan feeling had been a matter of vital importance, now it was to become one of the sentiments.

The Trial of Mary Blandy. (1752.) Edited by WILLIAM ROUGHEAD. Dedicated to LORD DUNSANY.

The heroine of this eighteenth century *cause célèbre* was convicted at Oxford Assizes in 1752 for the murder of her father at Henley by poisoning him with arsenic. Her defence was that she gave him the drug believing it to be a love philtre, with the view of making him "kind" to her lover, Captain Cranstoun, and removing his opposition to their marriage. Cranstoun escaped and died abroad, leaving the partner of his crime to pay the penalty. The introduction gives from contemporary sources a full account of the whole circumstances, which afford a graphic view of eighteenth century life and manners. The official report of the trial is reprinted verbatim, the appendices contain much new and unpublished material from the British Museum and Record Office, &c., and the illustrations include reproductions of all the known portraits of Mary Blandy.

The Trial of James Stewart. (1752.) Edited by David N. Mackay. Dedicated to Alexander Campbell Fraser.

The outlines of the story of James Stewart's life in Duror of Appin are familiar to all students of Scottish history and of those splendid romances by Robert Louis Stevenson—"Kidnapped" and "Catriona." In view of the importance and interest of the case, the publishers have included in this edition a full reprint of the evidence and speeches so far as available, prefaced by a carefully written introduction, and followed by biographical and other appendices which will enable the reader to realise the political and local surroundings of the story.

Eugene Aram: His Life and Trial. (1759.) By Eric R. Watson, LL.B., Barrister-at-Law.

In the year 1744-45 Daniel Clark was murdered at Knaresborough. In 1758 his bones were found and Eugene Aram arrested. In the following year he was tried and condemned for the murder. Bulwer's famous novel and Tom Hood's poem have kept this mystery alive, but it has remained for the present volume to present this famous case in its true light.

The Douglas Cause. (1761-1769.) Edited by A. Francis Steuart, Advocate. Dedicated to the Hon. Lord Guthrie.

The "Douglas Cause" is probably the greatest civil trial affecting *status* that Scotland will ever know, and no trial of its time created so great a sensation or aroused so much popular feeling. The Cause lasted in all for eight years. In 1761 Archibald Steuart or Douglas was served heir, as nephew, of the late Duke of Douglas. This service was at once challenged by the tutors of the Duke's heir male, the young Duke of Hamilton, who alleged that Archibald Douglas had no right to the Douglas estates, being a supposititious child. The legal proceedings came to their first halt in 1767, when the Court of Session—the fourteen judges of which were equally divided—gave, by the vote of the Lord President only, their judgment against the popular hero, young Douglas. He appealed to the House of Lords, and in 1769 had the satisfaction of being replaced in his position as heir to the Duke of Douglas, though not without the protest of five peers.

The Trial of Deacon Brodie. (1788.) Edited by William Roughead. Dedicated to the Hon. Lord Dundas.

The trial of William Brodie for breaking into and robbing the General Excise Office for Scotland took place on 27th and 28th August, 1788. No more picturesque and striking figure than Deacon Brodie ever appeared at the bar of the High Court of Justiciary, and the story of his strange career, as unfolded in the course of the trial, is as enthralling as any romance. The double life which he so long and successfully led—as a respected citizen and town councillor by day, and by night the captain of a band of housebreakers—was the wonder of the Edinburgh of his time, and is still remembered as a triumph of skilful duplicity. His fame has acquired fresh lustre from the interest which his character aroused in Robert Louis Stevenson, who embodied Deacon Brodie in a play and owed to him the original conception of *Dr. Jekyll and Mr. Hyde.*

The Trial of Abraham Thornton. (1817.) Edited by Sir John Hall, Bart.

On the morning of Whit Tuesday, May 27th, 1817, the body of Mary Ashford was found in a pond near Sutton Coldfield. The surrounding circumstances suggested that she had been criminally assaulted and murdered. The night before she had attended a village dance at which Abraham Thornton, a young man in a somewhat superior station of life, had paid her marked attentions. Public opinion with one voice pronounced him guilty. Nevertheless, at the subsequent assizes at Warwick, he was acquitted. So unpopular was this verdict that an obsolete process of law was revised, an appeal of murder was "sued out," Abraham Thornton was re-arrested and had to plead at Westminster Hall to a charge of which, three months earlier, he had been declared "not guilty" by a jury of his countrymen. The legal arguments occupied the attention of Lord Ellenborough and three of his learned brethren for several months, and when at last Thornton was discharged the feeling against him was still so strong that he was obliged to emigrate to America. The scandal of these proceedings led the Attorney-General to bring in a bill, which was placed upon the statute book in 1819, abolishing appeals of murder and the ordeal by battle. If for no other reason, therefore, Abraham Thornton's trial is memorable as having brought about a change in the law. But to most people this aspect of the case will be overshadowed by the human interest attaching to the story. For to this day the actual

circumstances of poor Mary Ashford's death can only be a matter of conjecture.

The Trial of Henry Fauntleroy. (1824.)

Edited by HORACE BLEACKLEY, M.A.(Oxon.).

When Henry Fauntleroy, the banker, was brought to trial for forging a power of attorney on October 30, 1824, it caused the greatest excitement throughout the whole of Great Britain. The accused man was a gentleman of position, and the crime with which he was charged was punishable by death in the open street at the hands of the common hangman, and, according to the newspapers, Fauntleroy had led a most luxurious and dissipated life. The evidence at the trial was clear to conclusive; the criminal had swindled the Bank of England to the amount of £265,000; he was found guilty and condemned to death. Great efforts were made to secure a reprieve, without success, and the unfortunate banker was hanged in front of Newgate Prison, on November 30, 1824. This volume of the "Notable Trials" Series contains the fullest report of the Fauntleroy trial that has yet been published together with a full account of his very interesting career and a complete description of his various forgeries. His pedigree is given and many contemporary portraits. There are also lengthy accounts of the lives and crimes, based upon most elaborate research, of the following forgers, most of whom suffered the penalty of death:—John Ayliffe, John Rice, Daniel and Robert Perreau, Dr. William Dodd, William Wynne Ryland, Henry Cook, Henry Weston, John Hadfield, Joseph Blackburn, Henry Savary, Captain John Montgomery, Joseph Hunton, Rowland Stephenson, M.P., Thomas Maynard.

The Trial of Thurtell and Hunt. (1824.)

Edited by ERIC R. WATSON, LL.B., Barrister-at-Law. Dedicated to Sir HARRY B. POLAND.

The trial of Thurtell and Hunt at Hertford Assizes on 6th January, 1824, before Mr. Justice Park, for the murder of Mr. Weare in Gill's Hill Lane, near Elstree, is probably now best remembered by the familiar lines which contain a succinct account of the tragedy:—

> His throat they cut from ear to ear,
> His brains they battered in;
> His name was Mr. William Weare,
> He lived in Lyon's Inn.

But, in its day, it was the subject of universal interest, and Sir Walter Scott himself visited the scene of the crime. The present

volume gives, for the first time, a full account of the whole circumstances of the murder, together with a verbatim report of the legal proceedings, which resulted in the conviction of both prisoners. It is illustrated with many rare portraits of the persons concerned, views of the locus, &c., and forms a complete and authentic report of one of our most famous criminal cases.

Burke and Hare. (1828.) Edited by WILLIAM ROUGHEAD. Dedicated to Professor HARVEY LITTLEJOHN. [Also a Limited Edition, price, 25/- net, containing the whole proceedings against Hare, and several additional Appendices].

The names of Burke and Hare are familiar as household words wherever the English language is spoken. The magnitude of their crimes—they confessed to a minimum of sixteen murders—established a record in homicide. These miscreants, incited by the large sums paid by anatomists for subjects for dissection, conceived the scheme of establishing in Edinburgh a sort of murder factory, in order regularly to supply surgeons with material. Throughout the year 1828, the business was successfully conducted, the purchaser in every instance being the notorious Dr. Knox, the extra-mural rival of the Professor of Anatomy. The discovery of their last crime resulted in the apprehension of the gang, including Burke's mistress, M'Dougal, and Hare's wife. Owing to the difficulty of securing a conviction the Crown was forced to accept the Hares as King's evidence. At the trial Burke was found guilty and M'Dougal was acquitted.

The Trial of William Palmer. (1856.) Edited by GEORGE H. KNOTT, Barrister-at-Law. Dedicated to Sir HARRY B. POLAND. Second Edition, edited by ERIC R. WATSON, LL.B.

The trial of William Palmer, which took place in May, 1856, was, in the opinion of Sir James Stephen, the eminent jurist, one of the greatest trials in the history of English law. The events which led up to the trial occurred in November, 1855, at Rugeley, in Staffordshire, where Palmer, who was about thirty-one years of age, had been a medical practitioner until two or three years previously. Mr. John Parsons Cook, whom Palmer was charged with poisoning, was a young man of about twenty-eight, who had

been articled as a solicitor, but he inherited some £12,000 and did not follow his profession. He also went on the turf, kept racehorses, and betted, and it was in this common pursuit that Palmer and Cook became acquainted. Three judges were appointed to try the case a very rare occurrence in England. The bar on each side was exceedingly strong, and during the course of the trial some of the most celebrated chemists and physicians were called upon to testify either for or against the prisoner. In the end Palmer was found guilty of the crime charged against him and suffered the last penalty of the law.

The Trial of Madeleine Smith. (1857.) Edited by A. Duncan Smith, F.S.A.(Scot.). Dedicated to the Hon. Lord Young.

Madeleine Smith, the daughter of a well-known and respected citizen of Glasgow, was tried at Edinburgh in June, 1857, for the murder of Pierre Emile L'Angelier. When still young Miss Smith made the acquaintance of L'Angelier, who was a clerk in a Glasgow warehouse and much below her in social station. From the first their association was of a clandestine nature; meetings and interviews became frequent, and when these were found impracticable, affectionately worded missives were exchanged On her becoming engaged to a gentleman in her own station of life Miss Smith endeavoured to get back from L'Angelier the compromising letters she had written him, but without success. At the trial of Miss Smith which followed the sudden death of L'Angelier the case for the Crown was that death was due to arsenical poisoning, and that on several occasions Miss Smith had supplied L'Angelier with cocoa or coffee poisoned with arsenic.

The Trial of Mrs. M'Lachlan. (1862.) Edited by William Roughead. Dedicated to Andrew Lang.

This case created an enormous sensation in its day, and is still remembered by its once famous name of "The Sandyford Mystery." After the prisoner had been convicted of the murder of her friend and fellow-servant, Jessie M'Pherson, the Government took the unusual step of appointing a Crown Commissioner to take fresh evidence to test the truth of a statement the prisoner had made after the verdict of guilty had been returned against her, with the result that the sentence of death was commuted to penal servitude. The action of the Government was the subject of lengthy debates in the House of Commons. The dramatic scene in which the

convicted woman in the dock denounced the chief witness for the Crown as the actual murderer is unparalleled in the records of criminal trials.

The Trial of Franz Muller. (1864.) Edited by H. B. Irving. Dedicated to Lord Halsbury.

On the night of Saturday, the 9th of July, 1864, a suburban train on the North London Railway arrived at Hackney about ten minutes past ten o'clock. A passenger who was about to enter a compartment noticed it was covered with blood, and in the carriage a hat, stick, and bag were found. About twenty minutes past ten on the same night a driver of a train noticed the body of a man lying on the six-foot way between Hackney Wick and Bow stations. The unfortunate man was still alive, but his skull had been fractured, and late the following night he expired from his injuries. Great public indignation was aroused by the crime, and the inquiries which followed resulted in suspicion falling upon a man named Muller who was found to have left London for America. He was followed by two detectives and subsequently arrested on board the "Victoria" when it arrived in New York harbour An eminent array of counsel were engaged in the case, and after a four days' trial Muller was found guilty and sentenced to death. Müller suffered the last penalty of the law on the 14th November, 1864.

The Trial of Dr. Pritchard. (1865.) Edited by William Roughead. Dedicated to Sir David Brand.

Dr. Pritchard was a well-known medical practitioner in Glasgow, where he resided with his wife and family. He was charged with the double murder of his wife and mother-in-law by poisoning them. After a trial which lasted five days and abounded in sensational incidents, Pritchard was found guilty, and was executed on 28th July, 1865, this being the last public execution in Scotland. The amazing hypocrisy of Dr. Pritchard affords a psychological study of high interest. Seldom has a more cruel and crafty miscreant graced the gallows. The sensational evidence of Dr. Paterson, who had seen the victims when alive and believed that they were being poisoned, yet maintained that it would have been contrary to medical etiquette for him to have interfered to save their lives, was one of the features of the trial.

The Trial of the Wainwrights. (1875.) Edited by H. B. Irving and Sir Edward Marshall Hall, K.C.

The trial of the Wainwright brothers for the murder of Harriet Lane was one of the most notorious cases of the early seventies. It was tried at the Central Criminal Court, London, before Lord Chief Justice Cockburn on 22nd November, 1875, and resulted in the conviction of both prisoners. Henry Wainwright, a married man with a family, had long led a double life, and when his affairs became embarrassed he determined to rid himself of his mistress, Harriet Lane, who was pressing him for money. His brother, Thomas, under the assumed name of Frieake, pretended that he was going to provide for her. On 11th September, 1874, she left her lodgings and was never seen again alive. To her relatives Wainwright said that she had gone off with "Frieake." Exactly twelve months afterwards Wainwright was apprehended in the act of transferring from a cab to his brother's business premises two parcels which were found to contain the dismembered body of a female. At his own place of business in Whitechapel Road a grave was found in which the remains had been buried for a year. The murder was committed with a revolver, the three shots from which had been heard by workmen in an adjoining yard. But for Wainwright's folly in leaving the parcels in the custody of an innocent third party while he himself went in search of a cab, it is probable that the crime would have remained a mystery. The defence denied the identity of the body with that of the missing woman; but the facts were too strong for them, and Henry was sentenced to death, Thomas to seven years' penal servitude.

The Trial of The Stauntons. (1877.) Edited by J. B. Atlay, Barrister-at-Law. Dedicated to Sir Edward Clarke, K.C.

The case of the Stauntons, or, as it was more generally known, the Penge mystery, will always rank among the English *causes célèbres* of the last century. It aroused at the time an amount of excitement and interest among all classes of the community for which it would be hard to find a parallel. The case was tried in September of 1877 at the Old Bailey before Sir Henry Hawkins, recently appointed to the bench, and lasted for a week. There were four prisoners on trial, Louis Staunton, his brother, Patrick Staunton, Mrs. Patrick Staunton, and Alice Rhodes, a sister of Mrs. Patrick Staunton. They were charged with the murder of Mrs. Louis Staunton by starvation and were all found guilty and sentenced to death. Strong representations, however, were made

to the Home Secretary by the leaders of the medical profession in favour of the hypothesis of natural disease and the prisoners were reprieved, though only on the day before the date fixed for their execution. Alice Rhodes, against whom there was practically no evidence of anything but adultery, was at once released; the Stauntons were sentenced to long terms of penal servitude.

The Trial of Eugene Marie Chantrelle. (1878.) Edited by A. DUNCAN SMITH. Dedicated to Sir HENRY D. LITTLEJOHN.

The trial of Eugene Marie Chantrelle, for the murder of his wife by poison, occupies a conspicuous position in the annals of Scottish criminal jurisprudence. The evidence in the case was almost entirely circumstantial, and it undoubtedly derived its force from a continuous series of particulars, any one of which, in itself, would have justified no more than a mere suspicion against the accused Mr. Aitken Ransome in an article in the *Bookman* said: "Although nothing is written in the way sensational novelists believe it necessary to write in order to produce curiosity and excitement, no book for a long time has so detained me against my will. And why? Simply because its form is the best conceivable for the development of a single sensation and the gradual scientific exposition of an extraordinary type of mind."

The Trial of Kate Webster. (1879.) Edited by ELLIOTT O'DONNELL. Dedicated to Sir HARRY BODKIN POLAND, K.C.

In Mr. Elliott O'Donnell's introduction to this volume, which he has edited, there is set forth as much as could be gathered together of the history of Kate Webster, the murderess of Miss Thomas, of Richmond, from the day of her birth to the moment of her execution. It also contains many original and striking comments on her character and references to certain analogous cases, *i.e.*, in which other female servants have murdered their mistresses. The trial, at which Sir H. B. Bodkin, K.C., to whom this volume is dedicated, appeared for the prosecution, is given in full. In reading these pages it is easy to understand why the trial not only excited such an almost unparalleled sensation at the time, but left behind it a panic so great and continuous, for, apart from the barbarity of the crime itself and all its appalling accompaniments, the case presents various novel features. For example, there is the clever impersonation of the murdered woman by the murderess; the very ingenious manner in which the murderess

tried to incriminate several innocent men, and very nearly succeeded; the extraordinary nature and number of her statements and confessions, and her very exceptional personality and psychology. These and sundry other features combined in imparting to the case a grim fascination that is, perhaps, unique.

The Trial of the City of Glasgow Bank Directors. (1879.) Edited by WILLIAM WALLACE, Advocate.

The trial of the City Bank Directors ranks in the estimation at least of the layman, if not of the professional lawyer, as probably the most important which has taken place in Scotland. The magnitude of the financial crisis brought about by the collapse of the Bank, the social standing of the Directors to whose hands the management of it was entrusted, the startling nature of the evidence adduced by the prosecution, all combined to invest the trial with an interest which is not surpassed in the annals of our criminal jurisprudence.

The Trial of Dr. Lamson. (1882.) Edited by HARGRAVE L. ADAM. Dedicated to Sir CHARLES MATHEWS.

Dr. Lamson was tried in the year 1882 for the murder of his nephew, Percy Malcolm John. This is one of the few cases recorded where the poison used was aconitine. John, although nineteen years of age, was at school when the poison was administered to him, the motive for the murder being some small property which he had, and which would partly revert to Dr. Lamson on his death. The trial took place before Mr. Justice Hawkins, and Lamson was found guilty. Although great pressure was brought to bear, especially from America, to obtain a commutation of the sentence, he was eventually hanged.

The Trial of Mrs. Maybrick. (1889.) Edited by H. B. IRVING. Dedicated to the Hon. Sir WILLIAM PICKFORD.

James Maybrick, a Liverpool cotton broker, died at his residence, Battlecrease House, Aigburth, on Saturday, the 11th of May, 1889, under mysterious circumstances. He was fifty years old at the time of his death. A suspicion had arisen in the

minds of some of those attending on Mr Maybrick during his illness that his wife was attempting to poison him She was arrested after his death, and tried for his murder at the Liverpool Assizes. She was convicted, and sentenced to death on the 7th of August, 1889. On the 22nd of August this sentence was commuted by the Home Secretary to one of penal servitude for life. Mrs. Maybrick served fifteen years of imprisonment, and was released on the 25th of January, 1904. The justice of Mrs. Maybrick's conviction was gravely questioned at the time, and has been the subject of criticism ever since.

The Trial of Thomas Neill Cream. (1892.) Edited by W. Teignmouth Shore.

Thomas Neill Cream was one of the most brutal scoundrels ever hung, and to the student of criminology affords a most interesting "subject." From youth upward he was a murderer, unscrupulous and unmerciful. His character was complex; sometimes he murdered for money, sometimes apparently for sheer love of slaughter, lust of cruelty. Born in Glasgow in 1850, he was taken as a boy to Canada, where he was well educated. He studied medicine, and qualified as a physician and surgeon both there and in this country. From the start of his professional career in Canada and Chicago he adopted murder as a means of livelihood and seemingly of pleasure, the climax being the series of murders he committed in Lambeth in the year 1891. And in the end he very nearly escaped the just recompense of his crimes, as it was by no means easy to bring his misdeeds home to him. He was hung for murdering an unfortunate named Matilda Clover, his guilt being brought home to him by his having shown an intimate knowledge of the cause of her death before any one had suspected foul play. Also at the trial in October, 1892, Mr. Justice Hawkins admitted as evidence against the accused proof that he had made a practice of buying poison such as had been administered to Matilda Clover, and that he was almost certainly guilty of other and similar crimes.

The Trial of A. J. Monson. (1893.) Edited by John W. More, Advocate. Dedicated to the Lord Justice-Clerk.

The trial of Alfred John Monson on the double charge of attempting to murder and of murdering Windsor Dudley Cecil Hambrough, at Ardlamont, Argyllshire, may be placed in the list of Scottish trials as the most important which has taken place

since that of Madeleine Smith. The circumstances of the alleged crime, the place where it occurred, and the social position of the accused and his alleged victim, were of such a kind as to at once arrest attention and to make people look with interested eyes to the High Court of Justiciary in Edinburgh, where, on 12th December, 1893, the prosecution and the defence began their efforts, extending over ten long days, to get at the heart of the mystery.

The Trial of Adolf Beck. (1904). Edited by Eric R. Watson, LL.B.

The abiding peculiarity of Adolf Beck's case consists in several things not commonly found in the general run of "mistaken identity defences," though, as will be seen, it has parallels. First there is a very confident identification of Beck by a very intelligent woman in the street as the man who had defrauded her three weeks before. Then we have him recognised by an honest retired police officer as the actual criminal. We find this criminal by mere chance using the same haunts as Beck and wearing very similar clothes. We find a thing that, in the experience of a learned judge, almost never happens, a man challenging, and with justice, his identity as a person previously convicted of the same class of crime Finally we find Providence, if it be not presumptuous to try to trace the finger of God in the detection of human guilt, bringing the truth at last to light by suffering the actual offender to persist in his wicked courses, when the innocent, but by no means estimable, wrongly convicted Beck was again under lock and key.

The Trial of Oscar Slater. (1909.) Edited by William Roughead. Dedicated to the Hon. Lord Guthrie.

The case of Oscar Slater, who was tried in May, 1909, for the murder of Miss Marion Gilchrist, excited widespread interest at the time, and, by reason of the sensational rumours of which it was the occasion, exercised the popular imagination for many months. But apart from these, the case itself contains elements sufficiently strange and suggestive to supply, in an unwonted degree, a legitimate and lasting interest. The trial at Edinburgh; the obvious weakness of certain links in the formidable chain forged by the Crown; the surprising verdict; and, finally, the illogical and unsatisfactory reprieve, combined to merit for this case a conspicuous niche in the gallery of Scottish *causes célèbres*.

The Trial of Hawley Harvey Crippen. (1910.)

Edited by FILSON YOUNG. Dedicated to Sir BASIL HORNE THOMSON, C.B.

No trial of modern times was more widely known and discussed than that of "Dr." Crippen for the murder of his wife, and few cases are richer in the human and dramatic interest which constitutes the chief appeal of a great crime. The character of the criminal and his passion for his mistress; the contrasted types of the two women, the one the victim of his hate, the other of his love; the unusual method of the murder; the sensational flight of Crippen and Le Neve and their subsequent arrest at sea; and the later disclosures of the trial at the Old Bailey; combine to give to this case its unique attraction and a place by itself in the catalogue of crime.

The Trial of John Alexander Dickman. (1910.)

Edited by S. O. ROWAN-HAMILTON, Barrister-at-Law. Dedicated to LORD COLERIDGE.

The crime with which John Alexander Dickman was charged at Newcastle Assizes in July, 1910, was the sixth murder committed in a railway carriage since the introduction of railways into England. He was convicted, upon purely circumstantial evidence, of the murder, in a train near Morpeth, of John Innes Nisbet who was carrying a bag containing £370 to pay wages at a colliery. The identification of the prisoner was far from conclusive, and the unsatisfactory account of his conduct and movements which he gave in the box was mainly accountable for the verdict. The case is a remarkable example of the operation of the Criminal Evidence Act of 1898. The full text of the trial is printed, including the cross-examination of the prisoner which virtually sealed his fate, and the introduction contains a complete history of the case and of the many interesting and important points to which it gave rise.

The Trial of Steinie Morrison. (1911.)

Edited by the Hon. H. FLETCHER MOULTON, B.A.(Cantab.), Barrister-at-Law. Dedicated to the Hon. Mr. JUSTICE DARLING.

Steinie Morrison was convicted of murdering Leon Beron, a Russian Jew, who was found dead on Clapham Common on New Year's Day, 1911. His face had been mutilated by a knife and two large S's—"the mark of vengeance"—had been cut on

the cheeks. The sentence of death was commuted to one of penal servitude, and Morrison, still protesting his innocence, died from semi-starvation in Parkhurst Prison Infirmary some years later. What makes this trial of continued interest is the picture it gives of a life in London almost unaffected by ordinary conditions, a life in which men who do no work stay all day in restaurants; where a man with an income of fifteen shillings a week is described as a retired gentleman living on his means, and where a man is one day a waiter and the next day a customer in the same eating-house.

The Trial of the Seddons. (1912.) Edited by FILSON YOUNG. Dedicated to Sir EDWARD MARSHALL HALL, K.C.

The trial of Mr. and Mrs. Seddon in 1912 for the murder of Miss Barrow, their wealthy lodger, forms an important commentary on the value and effect of purely circumstantial evidence. The wife was acquitted; the husband was found guilty, and was duly executed. The victim died from the effects of arsenic, but possession of that poison was not brought home to the prisoners, nor was there any evidence of administration. Seddon was probably convicted as the result of his appearance in the witness box, and the case is an instructive illustration of the working of the Criminal Evidence Act. The full text of the trial is given, including the speeches of the Attorney-General (Sir Rufus Isaacs) for the Prosecution and of Mr. Marshall Hall for the Defence, and in the introduction the main features of the case are focussed in a way which shows that criminology, handled by a man of letters, can be made interesting to a far larger public than the legal fraternity affords.

The Trial of George Joseph Smith. (1915.) Edited by ERIC R. WATSON, LL.B., Barrister-at-Law. Dedicated to ARTHUR NEIL.

George Joseph Smith, executed for the first of a series of murders, which are mostly remembered by the public as the "Brides in the Bath Murders," was one of the most remarkable criminals of all time. An old reformatory boy, dismissed in pre-war days with ignominy from Her Majesty's service, so ignorant that in the summer of 1915 he spelt "German" with an initial "J," he yet contrived to win golden opinions from most women and many men, the chaplain who finally attended him and the bishop who confirmed him in Maidstone gaol being

amongst those who could scarcely believe in his guilt. The method of the murderer was entirely novel, and demonstrated the possibility, nay ease, of drowning an adult woman without bruising her.

The Trial of Sir Roger Casement. (1916.) Edited by GEORGE H. KNOTT, Barrister-at-Law. Dedicated to the LORD CHIEF JUSTICE and the Hon. Mr. JUSTICE DARLING.

Though the trial of Casement for High Treason in the High Court of Justice in 1916 was but one of the minor sensations of the Great War, yet its intrinsic interest and historical importance well warrant this authentic report of the proceedings. Casement, having held divers high appointments under the British Crown, having been knighted for his services and having retired on a pension, upon the outbreak of hostilities proceeded to Germany where he was actively employed in inciting the Irish prisoners of war to join the German arms against England. The frustration of his attempt to run men, arms, and ammunition with a view to raising a rebellion in Ireland reads more like some tale of strange adventure than sober history. A full report of the trial is here given, as well as of the no less important proceedings in the Court of Criminal Appeal, together with many documents and photographs illustrative of the case.

The Trial of Ronald True. (1922.) Edited by DONALD CARSWELL. Dedicated to the Right Hon. LORD JUSTICE ATKIN.

The criminal responsibility of the insane has for many years been a source of acute controversy between lawyers and medical men. Should insanity be an absolute defence to a criminal charge? If not, is the law in a position, having regard to the general principles of natural justice, to formulate the conditions the defence may be a good one? On these questions law and medicine join issue. Neither at present can give a wholly satisfactory answer. The case of Ronald True has been included in the Notable British Trials Series on account of the precision with which it exposes this medico-legal dilemma. Unfortunately the inherent difficulty of the subject has been aggravated by the misconceptions and prejudices with which it is surrounded. The editorial introduction has therefore been written with the object of clearing these away and setting the problem in a proper

perspective. In his *résumé* of the facts Mr. Carswell gives a fascinating study in morbid psychology, and his historical and critical exposition of the English law of criminal responsibility makes *The Trial of Ronald True* a valuable addition to the library of the criminal lawyer and the alienist.

The Trial of Frederick Bywaters and Edith Thompson. (1922.) Edited by FILSON YOUNG. Dedicated to HERBERT AUSTIN.

The trial of Frederick Bywaters and Edith Thompson on a joint charge of murder took place at the Old Bailey on 6th December, 1922, and the following days. They were jointly charged with the murder of Percy Thompson; a second indictment of conspiracy not being proceeded with. It had come out in the Police Court proceedings that Mrs. Thompson had written a long series of letters to Bywaters, during his voyages in a ship on board of which he was employed as laundry-steward. In these letters, strangely mingled with passionate expressions of love and long dissertations on books which she was reading, were the most direct and definite references to alleged attempts which she represented herself as making on the life of her husband. Constant references to poison and to the use of ground glass, passionate appeals that Bywaters would "send her something" which would achieve the desired end appear in these letters, which, when read aloud in Court, produced a very great effect on the jury. Nevertheless, the case for the prosecution was a weak one, inasmuch as there was no witness of the murder, except possibly Mrs. Thompson; and if she had not gone into the witness-box it is very unlikely that the jury could have convicted Bywaters of anything more than manslaughter, or that they could have convicted her at all. But she insisted on going into the witness-box; and under cross-examination, in the attempt to explain the references to poison and so forth in the letters, she stated that she was writing to Bywaters asking him to send her something which, administered to Percy Thompson, who suffered from heart attacks, would have so impaired his strength that when he next had a heart attack he would not have recovered. This admission hanged her.